

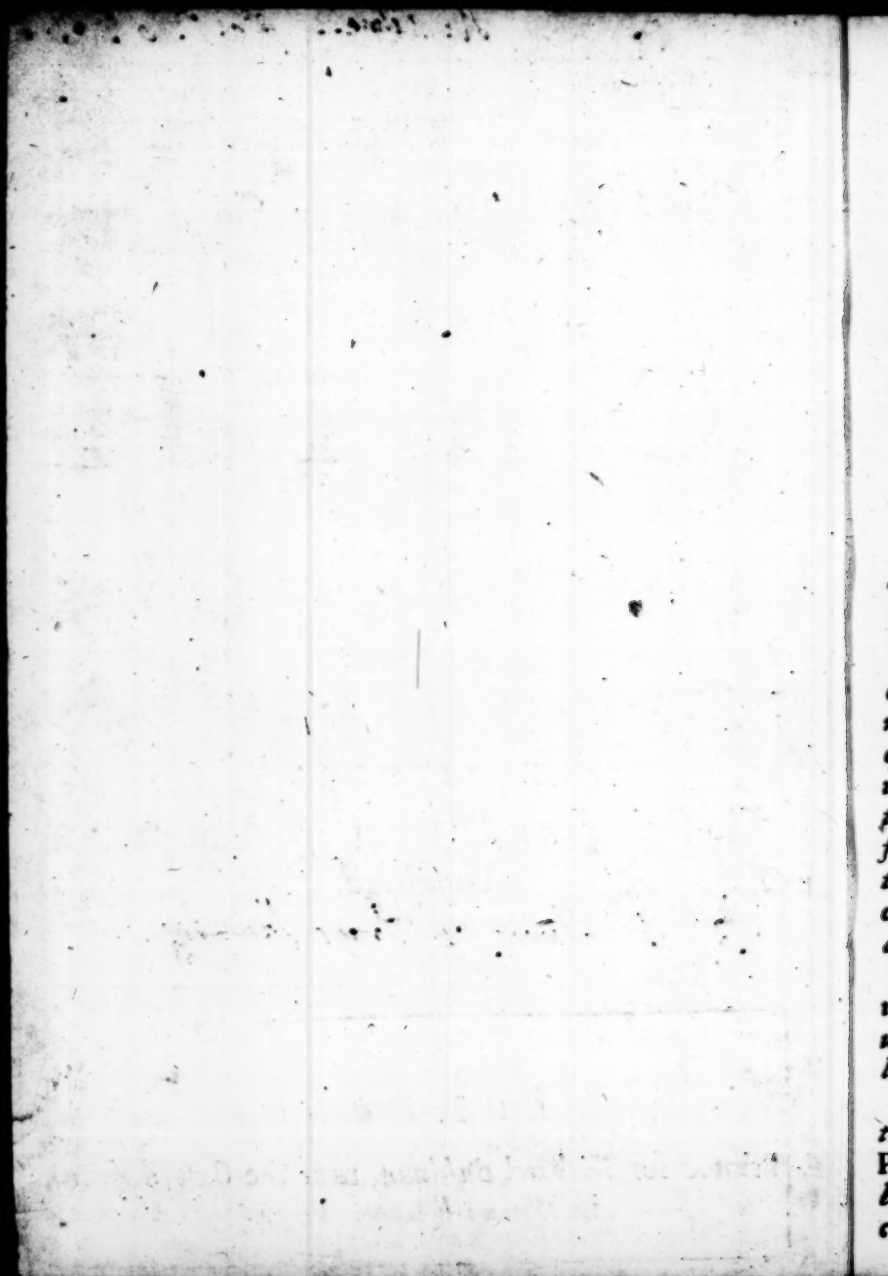
THE
Antiquity and Justice
OF AN
OATH
OF
ABJURATION

In Answer to a TREATISE,
ENTITLED,
The Case of an OATH of Abjuration
Considered:

By W. Atwood of Grays Inn Esq.

LONDON:

Printed for Richard Baldwin, near the Oxford Street
in Warwick Lane. 1694.



To the Right Honourable
Sir John Summers,
LORD KEEPER of the Great Seal
of ENGLAND.

My Lord,

WHEN such Assurance of the Fidelity of the Subjects to their Princes, as is a principal part of the Constitution of our Monarchy, is, by the Gentleman whom I oppose, censured as new, needless, mischievous, and impossible to be maintained; and for this an Appeal is made to the supposed sense of the Representatives of the Commons of England; equal Judges will think it but requisite for one, from whom the greatest Authorities have been, and are likely to be received, with Prejudice; to fly to the Protection of a Person, who, under their Majesties, is at the Head of our Laws: Not for false and servile Glosses upon them, or a treacherous giving them up; but for restoring, explaining, and adorning them.

Were it in my Nature to flatter, I am sure here the Subject would free me from the Imputation; /as my Incapacity to write upon it what I ought, may plead in excuse of my offering at so little.

This I may say, that since your Lordship is well known, not to have served their Majesties by halves, as if they had a Naked Possession of the Throne without Right; no one Man's Disability by an Oath of Abjuration, can be lamented as a publick Loss: Nor can any Example be more persuasive than your Lordships; whose

The Epistle Dedicatory.

Judgment, and Integrity, no body is so singular as to call in question.

Possibly many, who would incline to think nothing of mine worth reading, may have the Curiosity to see, what it is that encourages my Presumption in this Dedication; and the Hopes, that your Lordship, who have so few Moments which are not taken up with the Affairs of the Publick, and doing good to Mankind; should spare some time to look into what its Author must be suppos'd, to judge not unfit for your Lordship's View, and favourable Reception.

And, indeed, my Lord! those Memorials of pass'd times which I here publish, and others which I refer to, have so long lain buried, and unobserved; and are of so great consequence for vindicating the Right of the present Government, from those Reproaches, which its Enemies pretend to found upon the Nature of the English Monarchy; that I cannot but think, these Collections may be allowed the Honour of having a Patron, whose Approbation would effectually recommend them to the World.

If your Lordship shall think well of what I here tender, in Proof, that the Right of their present Majesties ought to be universally acknowledged, and sworn to, if required by Act of Parliament; it will be a mighty Encouragement for me to publish at large those Evidences, from the earliest times of this Monarchy downward, manifesting their Right to be according to its Fundamental Constitution. Which Province, tho many are more fit for it, has been assumed, and labour'd in, by

(My Lord)

Your Lordship's most Obedient
Humble Servant,

W. ATWOOD.

THE
Antiquity, Justice, & Necessity,
OF AN
OATH
OF
ABJURATION.

TH O' the Author of the Case of an *Oath of Abjuration considered*, makes a shew of Reason and Authorities against such an Oath, and against all that are
(a) declarative of Right, or more expressive of the Duty of the Subject, than the Oath of Allegiance, enacted 1 W. and M. I shall hope to make it evident, That Reason, and the Stream of Authorities, are full against him; without being thought in the least to reflect upon that Parliament which made the New Oath; or upon those Members in either House, who have opposed farther Securities, when, perhaps, they thought the Times did not require them; Or that the Terms in which the proposed Oaths had been conceived were open to reasonable Objections; nor, possibly, had any body been at the pains to lay before them the Form, or Substance, of the Oath of *Fidelity*
anciently

anciently used ; and, as I doubt not to prove, enjoyned by the Constitution of this Monarchy, and still in force.

The *Considerer* would be thought as true a Friend to the English Nation, and to our present Settlement, as any body ; yet one may say, that the Cloven Foot appears, by the manifest end of his Book ; and, particularly, by two Passages, when he was not upon his usual Guard.

(a) *Pag. 8.* See the Inconstancy of English Men.

One is, where he, without any real ground, brands the People of *England* with the Character of (a) Inconstancy.

The other, where he intimates, That, in his Opinion, no Succession to the Crown of *England* can be (b) Legal, unless it be Lineal ; or, as he elsewhere explains his use of the Word, (c) *Lineal* and

(b) *Pag. 25.* Although they could not lay Claim thereto by Lineal and Legal Succession.

Immediate ; by which he excludes his Majesty's Legal Right, as a certain Bishop does her

(c) *Pag. 23.*

Majesty's, while he contends, That God has dispos'd of the Kingdom to his Majesty by Conquest.

These Notions are, like *Sampson's* Foxes, joyn'd Tail to Tail for the Destruction of the present Settlement.

Sure I am, our *Considerer* will have no reason to complain of any Injury, in being thought one of the same Principle, or rather Faction, with a (d) certain Authour, who says,

(d) *Vid.* The Pretences of the French Invasion examined. Licensed by the Lord Nottingham upon Admiral *Russell's* beating the French Fleet, p. 11.

‘ Considering the Hurry the late King's unexpected Desertion put all things in, and ‘ the absolute necessity of a speedy Settlement, the Friends of the Old English Monarchy have just cause to rejoice, it was ‘ made so near the Old Foundation, with a ‘ small and only *Temporary Variation* from ‘ it, which was also absolutely necessary in ‘ that Juncture of Affairs.

Query, What he means by a Temporary Variation ? Whether during the Lives of their Present Majesties, and of the Prince

and Princess, and of the Issue of either of them : Or, which is most likely, during the Absence of the late King, while that Juncture or Necessity should continue ?

Yet the *Considerer*, that he may create a Confidence in them who acknowledge the Right of their Majesties, and believe the Settlement of it to be no Variation from the Constitution of the Old English Monarchy, pretends not only (e) Sincerely to love their Present Majesties, and to serve them

(e) *Pag. 1.*

according to his poor Capacity and Station, well as any Man in *England* ; but to entertain no manner of Scruple

ple concerning their Right ; to have had a previous Disposition for receiving it, in approving of the (a) *Bill of Exclusion* ; and to admit, that very anciently the *States* of the Realm did *Depose* one King, and set up another by a (b) *Power Inherent* in them ; or what they in those Times, when they could not be ignorant of the Constitution of this Monarchy, judged so to be.

thought inherent in them on such extraordinary occasions.

(a) P. 22. This is a famous Passage, and makes very much for a Bill of Exclusion, at least, if I mistake not.

(b) If they had not intended thereby to shew and exercise a Power they

And yet, out of his great Concern for the Liberties of England, he would not have the Subjects *Hurt by compelling them* to swear to an Authority, which, of his own shewing, or concession, is truly Legal ; and to renounce a pretended Authority, which never can be real, till that ceases which has been established by a Power which the *States* of the Kingdom in the time of R. 2. and long before, judg'd *inherent* in them ; and if it were not originally *inherent*, was given by express Law.

Pag. 22. They hurt John, &c. But they intended not to hurt the Subjects by compelling them to swear against him.

Tho' the Title of his Treatise relates only to an Oath of *Abjuration*, which seems meant of an *Express Abjuration* ; His Arguments run against all *implied Abjurations*, which Oaths *Declarative of Right* plainly are: Vide Pag. 33.

This might set aside the Consideration of the Head which he raises upon the supposed Impossibility of keeping such an Oath : For, certainly, it is far from being more impossible to be true to Princes, whose Right we swear to, than to those whose Right we refuse to swear to.

Tho' he will not allow of any manner of *Abjuration* ; he seems particularly to reflect upon some Form offered at some time or other ; and yet is not so fair, or so distinct, as to give the Words at large, the rejection of which he would justify.

Pag. 35. The other part of Abjuration is of his Person and Government.

But, as he opposes all Oaths of Abjuration in general ; his Arguments will appear to be of no Weight, unless they strike at all such Oaths, tho' relating only to the present time : As if we should swear, which doubtless we may with a good Conscience, when required, That *James, lately King of England*, has no manner of Right or Title to the Crown.

Should

Should we go further, and Swear, That we will to our utmost oppose his *Readeption* * of Power; surely it is not impossible for us to keep this Oath, and yet submit to God's *Providence*, if it should be his Pleasure to re-establish him upon the Throne.

What he says, therefore, in relation to future Contingencies, I might leave out of the Question: As I might pass by all his Pretences to skill in History, upon the suppos'd Novelty of an Oath of *Abjuration*: For if it be needful, it's being New, could be no Objection against it, with a Man, who, if he be what he pretends, has no manner of Scruple against Abjuring the *late King's* Title and Government, for the present.

Besides, if there never had been any Oath expressly *Abjurious*; if it shall appear that there have been Oaths *Declarative of Right*; this would be enough to expose his vain shew of Reading.

His chief Positions and Insinuations are these:

I. That an Oath of Abjuration or barely
 (a) *Nide Pag. 33.* (a) *Declarative of Right*, is (b) *Altogether new*
 (b) *Pag. 4.* and strange in England, and in (c) *all other*
 (c) *Pag. 6.* When that Governments in the World: That is, never had
 which secures all other been required here, or in any other Govern-
 Governments in the World ment.
 besides, and that which has secured our own as
 well as any other for so many Hundreds of Years, (viz.) An Oath of Allegiance to
 the Possessors of the Throne, will not secure, or be thought sufficient to secure the pre-
 sent Government, on what Foundation will the World about us think we stand?

For a seeming Proof of which Negative, in relation to *England*, it was but requisite for him to make a great shew of being thoroughly read in our Histories; such an Undertaking becoming no Man who has not a comprehensive Idea of the State of this Kingdom under all the Successions of Kings. Nor, however, can he extend this Observation beyond his own Country, without assuming to himself the knowledge of the past and present Governments of all other Nations.

Tho', as I shall prove, he has been a very negligent or partial Observer of the History of this Kingdom; he would have it taken upon his Word, That no Oath of *Fidelity* was ever required of the Subjects of *England*, other than an Oath to the Possessors of the Throne, as Kings in Fact, without Declarations of Right: When yet, as he pretends to demonstrate by an indigested heap of Quotations, there often has been as much occasion for such Oaths, as can be imagined now.

II. He labours to impose the Belief, That an Oath of Abjuration, or barely *declarative of Right*, is needless; because, as he will have it, there is as much Security to the Government from an Oath to a King, merely as King *de facto*; and particularly in the Oath required by the Statute 1 W. and M. As from an Oath recognizing the Right of the Possessors, and abjuring the Pretences of others.

III. That an Oath of *Abjuration*, or barely *declarative of Right*, would be very mischievous: Because, 1. It would be a means of deceiving the Government, and occasioning the wilful Perjury of many; he uncharitably suggesting, that those his Friends, who take the Oath to their Majesties, while they believe the Right to be in the late King, will as readily swallow *Formal*, as they do *Material* Perjury.

2. It will occasion *Distractions*, and strengthen the *Jacobites*, he unreasonably supposing, that few will take it.

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3. It will be the means of turning out a great number of good People, that serve their present Majesties with Faithfulness, and Honesty, and Diligence, and with Affection too.

Page 31.

That is, who are in their Service, love their Persons, and pay them all the Allegiance which they take to be due to a King and Queen in Fact: But if they should be obliged to swear to their Right, must lose the Opportunities they have of serving him, whom they contend to be their only *rightful* Prince; with much greater Advantage than they could without Power and Wealth from their *Present Majesties*.

IV. He maintains, that an Oath of *Abjuration* is impossible to be kept: Falsely supposing such an Oath to imply a Fighting against God's Providence, and engaging never to obey the Person Abjured, tho' he should be restored without their Assistance, or Connivance.

In refutation of which his false Colours I shall shew,

I. That an Oath of *Abjuration*, or at least *Declarative of Right*, is not New or Strange in France.

II. That the Oath of *Fidelity* to our Princes, required by the Constitution of this Monarchy, is an Oath of *Abjuration*, either express or implied; and always as to a King of Right: And that the old Oath of *Fidelity* is more expressive of the Duty of the Subject, than the Oath of *Allegiance* required by the late Act; and that old Oath still remains in force.

III. That in several Ages of this Monarchy other Oaths have been required, and taken by the Subjects of England, besides those which were taken to the King for the time being: And that they are Oaths.

of the like Nature with those which he will have to be *altogether New and Strange*.

IV. That if there never had been an Oath of *Abjuration* before this time, however, this would be no colour of Objection against one now; for that it is more needful now, than it can be thought to have been in any of those Reigns in which he instances: And that an Oath expressly abjuring the late Kings Pretension, is now absolutely necessary: Nor is it to be thought that it would occasion *Formal Perjury*, but that it would prevent *Material* in many.

V. That it is likely to be of great Advantage, and Support, to the Government, and Nation.

VI. That no Man ought to refuse such an Oath to their Present Majesties, if required by Act of Parliament; and that it is not to be believed that the Refusers would be considerable, in number, or Interest.

I. Since he suggests, That the *World about us* would suspect the Foundation on which we stand, if an Oath of Abjuration, or more than to a King as barely King in Fact, or Possessor of the Throne, tho' without Right, should be required; it may be convenient to prepare the way for my Authorities in relation to England, with shewing that France, which makes so great a Figure in the *World about us*, would have no reason to draw any Inference from such an Oath, to the Disadvantage of our present Settlement.

Sur du Haillon de l'Estate & Succes des Affairs de France, p. 45.

Bernard de Girard, Lord of Haillon, in his History of France, written by the Command of C. 9. speaking of the Difficulty Pepin had to get the People of France to depose Childerick, of the Merovingian Line, and set up him, says,

He thought that to discover openly to the French in France, the desire which he had to make himself King, would be lost time, and to endanger his Person; seeing the French were by Oath solemnly sworn at the Coronation of their Kings, to serve, maintain, and pre-

Obligez a Ray de le servir, maintenir, & conserver envers tous, & contre tous.

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(a) *Moyenant quil soit just, &c.*

(b) *Doer of Right.*

serve him, towards, or in respect of, all men, and against all men. When the Prelates and Lords (instead of the Peers, Clerks, and Laicks, since instituted) in the name of the Church, the Nobility, and People, promised the King at the Ceremony of his said Coronation, to obey, serve, and defend him. (a) Provided that he be just, valiant, diligent, a (b) Doer of Right, clement, a Minder of his

his Affairs ; and that he knows how to resist his Enemies, punish the bad, protect the good, and defend the Christian Religion.

Here is not a bare Passive Obedience sworn to, as if it were only while they lay under a Force, but an Active. And in swearing to defend their King *against* all Persons whatsoever, they, by plain Implication, swear, That no body besides has right to their Allegiance ; for then he would be one against whom they ought not to defend their Prince. And yet it appears that here is an Oath which they had no reason to complain of as a Burden, since it is so express upon what Condition the Obligation depends.

I shall give one other memorable Instance, how little Reason the French would have to undervalue us for an Oath of *Abjuration* ; and that shall be in the Form of the Oath which the Peers, the Great Men, the Nobles, and States of the Kingdom of France, as well Spiritual as Temporal, together with the Cities and Communities of any note, and Inhabitants and Burgeses of the Towns of the Kingdom, were obliged to take to our King, Hen. 5.

Walsingham. fol. 401.
temp. H. 5. Proceres, Magnates, & Nobiles, ac status regni prae. tam spirituales quam temporales, nec non Civitates & Notabiles Communitates, ac Cives, & Burgeses Villarum ejusdem regni, praefato consanguineo suo

pro tempore obedientis, praestabant Juramenta quae sequuntur.

* First, That they will suffer the said Lord King Henry to dispose of the Army, and govern the Common Weal ; and will humbly and dutifully obey and observe his Commands, in all things concerning the Government of the said Kingdom, and in all other matters. Also, That the said Peers, Great Men, &c. as much as it may concern all and every of them, in all things, and through all things, shall well and faithfully observe and cause to be observed by all others, those things which were appointed and agreed between the said Cousins of the said King, and the King himself, by the Counsel of those whom the said Cousins and the said Lord the King, thought fit to consult therein. And that, immediately from and after the Death of the said Cousin of France, they shall be the faithful Men, and Leiges of the said King Henry and his Heirs ; and him, for their Leige Lord, and Supream King of France, without Opposition, Contradiction or Difficulty, shall receive, and admit, and for such shall obey : And that they shall never for the future obey any body, besides the said Cousin, as King, and Regent, of the Kingdom of France, except the said King Henry and his Heirs. Also, That they will not give any Counsel, Aid or Consent, that the said King Henry should lose Life, or Member, or be Imprisoned, or should suffer

‘ Damage, or Diminution, in his Person; State, Honour or Goods.
 ‘ But if they should know any such thing to be attempted or plotted
 ‘ against him, they to their Power will hinder it, and will give the
 ‘ said King Notice of it, as soon as they can, themselves, or by Mes-
 ‘ sengers, or Letters.

This Form was first settled by Articles, and the Articles afterwards

Rot. Parl. 9. H. 5. n. 18.
 Pars 1. *Approbatio pacis
 inter Regem Anglie &
 Francie nuper conclusa.*

were confirmed by the States of both Kingdoms, viz. as the Record expresses it, The Prelates, and inferiour Clergy, Peers, and Great Men, and the Commons of both Kingdoms. Which shews, that the Parliament of England

approv'd of such a Recognition and Abjuration.

This Oath is so express, and full, that I need make but this Observation upon it; That our magnanimous King, Henry the 5th, wanted some French man of this Gentleman's Abilities, to insinuate himself

Page 30. They will see us now forc'd to be chain'd to our Obedience, and tied down groveling, for fear of rising up against them. This posture will not please our Friends abroad, &c.

into his Favour, by Protestation of Zeal for his Service, and to perswade the King, That Friends abroad would not be pleas'd to see the French Nation thus chain'd to their Obedience; and Enemies abroad, and at home, would rejoyce at it.

II. But since he who charges the English Nation with Inconstancy,

Page 30. This Posture will not please our Friends abroad, who understand our generous Tempers better, they will fear the effects of such unusual Bonds.

would have our Kings trust its Generosity for Obedience to them. I shall here examine whether the Wisdom of our Fore-fathers agree with his in this Point.

Both Princes and People being subject to many Frailties, and Temptations, which may draw them to separate Interests; it has been found expedient in all Ages, and almost all Governments, to make their Promises to each other matter of Religion, by the Interposition of the solemn Sanction of Oaths, to which God is called a Witness, and Party. Hence it is, that, at least in all limited Monarchies, the Princes have ever been sworn to the main Limitations: And in both the limited, and absolute, the Subject has sworn Obedience. And tho' no People have been truer to their Kings, while they preserved their Coronation Oaths, than the English; the Swearing Obedience has been no where more carefully provided for. If our Rhetorician will say, *They have been tied down, groveling on the ground, for*
 fear

fear of rising up against their Princes ; others will say, that this can be applied only to such as, with him, think their Duty a Chain.

And yet this is such a Chain, as was confirmed by the Great Charter of the English Liberties, Declarative of the ancient Law of the Land ; according to which, the Sheriff's Turn is to be held twice a Year, once after Easter, and once after Michaelmas ; at which time there is to be a View of the Free Pledges : Which View, says the Charter, is to be thus : *Viz. That our Peace be kept, and the Tything be entire, as it used to be.* *Magna Carta, cap. 35.*

Upon which the Lord Coke says,

(a) The Institution for keeping the Kings Peace, was, ' That every Freeman at his Age of 12. should in the Leet, if he were in any, or in the Turn, if he were not in any Leet, take the Oath of Allegiance to the King : And that Pledges, or Sureties, should be found for his Truth to the King, and to all his People ; or else to be kept in Prison. (a) 2 Inst. fol. 73.

This Frank-pledge, as he observes, was most commonly of Ten Families, thence called a Tything.

The Author of the (b) Mirror, speaking of King Alfred's Constitutions, says, ' Sheriffs Turns and Views of Frank-pledges were ordained, and that none of the Age of XIV, or upwards, should be received in the Realm for above 40 days, except Passengers to Fairs, Pilgrims, and Messengers, if he were not first pledied by Freeman, and sworn to the King by the Oath of Fidelity, and after received in a Tything. (b) Mirror. c. 1. Sect. 3

And under Title Abusions he says,

' It is an Abusion to suffer any one within the Realm above 40 days, who is of the Age of XIV, be he English-man, or Foreigner, if he be not sworn to the King by the Oath of Fidelity, and pledied, and in a Tything. Cap 5. Sect. 1.

By (c) Canutus his Law, every Paterfamilias was to be answerable for all within his Family. Or, as it is there expressed, Have them in his Pledge.

(c) *Liges Canuti c. 52. Habeat omnis Dominus familiam suam in plegia suo, &c.*

The (d) Confessor's Law is express, That all People ought to be under, or within the Frank pledges.

(d) *Liges Sancti Ed. c. 19. sub Decimali Fideiussu.*

(a) *Legis Sancti. Edw. de Friburgis.*

This, as the *Confessors Law* terms it, was the *Chief and Greatest Security*, by which all were sustained in a most settled state. And the Institution of it was so far beyond the time of memory in those days, that, as the Heathens made some God the Founder of a Family or City of unknown beginning; the Invention of this Law was ascribed to King (b) *Arthur*, whose truly great Actions have afforded so much matter for Fables.

(b) *Legis Sancti. Ed. De Grute. Hanc legem invenit Arthurus.*

The *Confessor's Law* does not give us the Form of Words used in Swearing to the *King's Peace*; either requiring only the Substance, or supposing the Form of what was so frequent, and so universal, to be known of all.

But we have a full Account of the Nature, and Substance of the

(c) *N^o. the Sheriffs turn, as appears above, was twice a year; and the Oath to the King was to be in the turn after Michaelmas.*

Oath, where speaking of the Annual *Folckmote*, to be held on the First of the Calends of *May*, which by the (c) time of meeting, and the Parties which compos'd the Assemblies, could be no other than a *Common-Council* of the Kingdom, or *Parliament*. It says,

(d) *Legis Sancti Edw. Tit. Grute.*

(d) 'It was Enacted, that there all People and Countries should meet once in every Year, to wit, on the first of the Calends of May, there (e) *one and all*, to confederate and consolidate themselves with a Faith and Oath never broken, as sworn Brethren, to defend the Kingdom against Strangers, and against Enemies, (f) *together with their Lord the King*, and with him to keep his Lands and Honours, with all Fidelity. And that they will be faithful to him, as (g) *their Lord the King*, both within and without the whole Realm of *Britain*.

(e) *In unum & simul.*

N^o. An Infamous Person was not to be admitted in to a Frank-pledge.

(f) *Una cum Domino suo Rigi.*

(g) *Sicut Dominus suo Rigi.*

'So ought all the *Princes and Earls* to swear together, before the *Bishops* of the Kingdom, in the *Folckmote*: And in like manner all the *Peers* of the Kingdom, and the *Knights*; and, in general, all the *Freemen* of the whole Kingdom of *Britain*, ought, in full *Folckmote*, to swear Fidelity to their Lord the King, as aforelaid, before the *Bishops* of the Kingdom.

According to this Law, the Nation was to swear *Active*, as well as *Passive* Obedience, and to defend the King, and Kingdom, against all Enemies whatsoever: And to be faithful to the King, as King of Right; since he is to be received for their Lord the King, or the only King.

What was to be sworn pursuant to this Law, does not differ materially from what was long before the Confessor's time Enacted under (a) Edmund, King of the East Angles, contemporary with the West Saxon King (b) Ethelwolph.

(a) Lamb. Archæologia Edmundus regnavit capit. An. 940. Disiit An. 945.

(b) Vide Spelm. Concil.

1 Vol. fo. 348. Concil. Presentibus Ethelwolfo Rege West-Saxonie, Bistricio Rege Mercie, & Edmundo Rege Est-Anglorum.

(c) Bromton, f. 859. *Hæc est Institutio quam Edmundus Rex & Episcopi sui cum sapientibus suis, instituerunt apud Culentonam, de Pace, & Juramento faciundo.*

Imprimis ut omnes jurent, in nomine Domine, pro quo sanctum illud sanctum est, fidelitatem Edmundo Regi sicut homo debet esse fidelis Domino suo, sine omni controversia, & seditione, in manifesto, in occulto, in amando quod amabit, nolendo quod nolet, & antequam juramentum hoc

Vide Lamb. *dabitur, ut nemo com-
celet hoc in Fratre, vel
proximo, plusquam in Extraneo.*

' This is the Institution which King Edmund, and his Bishops, with his Wise Men, instituted at Culinton, concerning Peace, and Swearing.

First, ' That all Men, in the Name of the Lord, upon whose account an Oath is Sacred, swear Fidelity to King Edmund, as a Man ought to be faithful to his Lord; without all Controversie, and Sedition, in what is open, in what is hidden, in loving what he loves, and being against what he is against. And before that this Oath shall be given, that no body conceal this in a Brother, or Neighbour, more than in a Stranger.

Here was required the Swearing Fidelity, and the Active Service due from a Man to his Lord, and to be against every thing, or person, which he was against: There was to be no Controversie, or Dispute, which might relate either to the Commands, or the Authority of the Commander. Both, for certain, were suppos'd to be according

*Verbum Regis est verbum
Legis. Ld. C. Bracton.*

ding to Law; contrary to which the King has never been presumed to have any Will.

The other Oath, as part of the Body of the Confessor's Laws, was received, and confirmed, or rather declared to be in force, four times, as I take it, in the Reign of *W. 1.* Tho' *Seld.* ad *Edm.* f. 172.

Mr. *Selden* will allow of but one Confirmation of those Laws.

1. At *Berkhamstead* before his Coronation, when the great *Earls*, *Edwin*, and *Morcar*, with the Army out of the North, which *Harold* left behind him, besides the Accession from all parts of *England*, treated with that King with Swords in their Hands, and obliged him to make a (a) *League*, or *Contract* with them.

(a) *Flor. W.* fo. 653. & others. *Fadus pepigit. N.* Tho' the *M. S.* of *Matthew Paris* mentions it as done by the Advice of Archbishop *Laufanc*: His Name appears to have been added to the Copy. And *Fretheric* certainly died at *Ely* before *Laufanc* came over.

At which time it seems to me, that *Fretherick*, Abbot of *St. Albans*, swore the King expressly, to the Observation of *St. Edwards Laws*.

(b) *Ordericus Vital.* f. 502. *Cunctique Praesules et quique procures, cum Gulielmo Concordiam fecerunt, ac ut diadema regium sumeret, sicut mos Anglici Principatus exigit, oraverunt, &c.* (c) *Vid. Bromton, Col. 962. Stubbs inter dictum Script. Col. 1702.* and others.

2. At his Coronation, which was beforehand agreed to be, as (b) the manner of the English *Principality*, or Political Government, requires. And accordingly he took the (c) *Coronation Oath*.

(d) *Vid. Seld. Dissert. ad Fletam, f. 519. Guliel. 1. dicitur Londinum Anno suo 4. convocasse omnes & provincias suis universis Anglos & Nobiles & Leges suas audire, ut eorum & iura & consuetudines ab ipsis audiret.*

(d) In the fourth of his Reign, when a Common Council of the Kingdom was held, to enquire, and settle, what were the Laws of the Realm; which went under the name of the *Confessor's Laws*.

(e) *Firmantur Leges Edwardi. Hoc quoque precipimus, ut omnes habeant & teneant Leges Edwardi Regis, in omnibus adhaerentibus & is que constitutas, ad Utilitate Anglorum,*

4. At some other time, when those Laws were enforced, with such Additions, or Amendments, as had been Enacted for (e) the Benefit of the English.

Among

Among the Laws thus amended, I find that about the Oath of *Fidelity*; there being more exprefs Provision for the Rights of the Kingdom, than had been before. One Clause or Chapter has these Words:

(a) 'We ordain, that all *Freemen* shall affirm with a *League*, and Oath, That within and without the whole Kingdom of *England*, they will be faithful to King *William* their Lord; preserve his Lands, and Honours with all *Fidelity*, together with his Person, and defend them against *Enemies*, and *Strangers*.

(a) *Liges W. I. c. 52. De fide & obsequio erga Regem.*

(b) This relates to the Pledges.

In another part of his Laws, after he has promised that all *Freemen* shall enjoy their Estates, as had been before enacted and granted in a *Common Council* of the Kingdom; there is this Clause or Chapter:

'We also enact, and firmly enjoin, That all *Freemen* of the whole Kingdom be *Sworn Brethren*, to defend our *Monarchy*, and our *Kingdom*, according to their Strength, and Faculties, and manfully keep the *Peace*, and preserve the Dignity of our Crown entire; and constantly to maintain *Right*, and *Just Judgment*, by all means, according to their Power, without Fraud, and without Delay.

Hereby the Subjects were to be engaged by Oath.

I. To be faithful to the King as their Lord, or only *Rightful King*.

II. Not only passively to obey, but to defend his Person.

III. In effect, to *Abjure* the right of all others: not only as he was acknowledged for their only true Lord; but as they were to *Defend* him against all *Enemies* whatsoever.

IV. They were to *Defend* the *Monarchy*, and *Kingdom*, and to maintain *Peace*, *Right*, and *Justice*, by all means within their Power: That is, by the *Sword*, if others fail'd.

The Import of the Oath required by this Law, in affirmance of the Old Constitution, is manifestly referred to, by the States of the Kingdom in their Letter to the Pope, 29 E. 1.

The Pope having cited the King to answer judicially before him, concerning his Rights over *Scotland*; his Parliament wrote a Letter to acquaint the Pope, that this ought not to be: And among other things they write thus:

29 E. 1. In Parl. apud Lincoln. Mar. West. de Anno 1308, & Ryly's Placita Parl.

Chiefly

Præcipue cum præmissa cedent manifeste in exheredationem Juris Corona Regni Angliæ, & Regiæ dignitatis, ac subversionem status ejusdem regni notoriam necnon in præjudicium Libertatis, Consuetudinum & Legum patrum, ad quarum observationem, & defensionem ex debito præstiti Juramenti astringimur mantentebimus tato posse totisque viribus cum Dei auxilio, defendimus. Nec etiam permittemus præmissa cum insolita, indebita, præjudicialia, & aliâ inaudita, prælibatum Dominum nostrum Regem, etiam si vellet, facere, seu modo quolibet attemptare.

* Chiefly, since the Premises would manifestly turn to the Disherison of the Right of the Crown of the Kingdom of England, and of the Royal Dignity, and notorious Subversion of the State of the said Kingdom; and also to the Prejudice of the Liberties, the Customs, and Laws, of our Ancestors; to the Observation, and Defence of which, we are bound, by virtue of the Oath we have taken, and which we will maintain with all our Power, and, by God's Assistance, will Defend with all our might. Nor also do we, or can we (as indeed we may not) suffer our Lord the King, even tho' he would, to do, or in any wise attempt the Premises, so unusual, undue, prejudicial, and before this time never heard of.

This may serve as a Parliamentary Explication of the Oath enjoined by the Laws of W. 1. in affirmance of the Common Law.

(a) S. Dunelm. f. 213. Anno 1086. Mandavit ut Arch. Episc. Abbates, Com. Bar. Viccom (cum suis militibus) die Cal. Augusti sibi occurrerent Sarisberia: quo cum venissent milites illorum sibi fidelitatem contra omnes homines jurare coegit. Vide Jan. Anglor. faciem novam. proving the extent of Militas illorum.

Pursuant to which, I find, that all the (a) Free-holders of England swore Fidelity to that King, against all men, in a great Council of the Kingdom at Salisbury.

As they had done two Years before, in a great Council at London: Or else in their severall Counties, soon after the breaking up of the Council.

Annales Waverlenses, f. 133. Anno 1084. Deinde, &c.

* At Pentecost, say the Annals of Waverly, he made his younger Son a Knight at London. Then, or after that, taking Homage of all Proprietors of Land throughout England, of whose ever Fee they were, he did not delay to receive the Oath of Fidelity.

Which gives me occasion to observe,

1. That at this, and other times, we find a plain Distinction between Doing of Homage to the King, or to his known Successor, and Swearing Fidelity: Yet,

2. Tho' Homage to inferiour Lords was without Oath, the Homage to the King, by reason of his Sovereignty, was often, if not always, sworn.

3. The Oath of *Fidelity* to the King, was an Oath of the nature of *Homage*; and requiring the same Subjection and Obedience. And both the one and the other, obliged the Subject to serve the King for the time being, as *Rightful*, and to defend him against all Men, without exception.

I. As anciently as the time of the *Heptarchy*, *Leige Fidelity*, and *Homage*, are said to be done by the Nobility of the *Mercian Kingdom* to *Offa*, the Son of *Offa* the First.

Mat. Par. Addit in Vita Offæ 1. Rex totius ditionis sue convocat nobilitatem, quæ ex Regis præcepto & persuasione Offano filio suo

Unigenito ligam fecerunt fidelitatem & homagium.

And an Historian, speaking of an Assembly of the *Earls* and *Barons*, with the Clergy of the *whole Realm*, in a *Parliament* at *Salisbury*, where *H. I.* obtained a Settlement of the Crown upon his Son *William* after him, *Hemingsford, f. 473. An. 1116.*

The said Great Men *did Homage* to his Son *William*, and *Swore Fidelity*: Where the Distinction of *Swearing* one, and *Doing* the other, is exactly observed.

The Learned Knight (a) *Sir Henry Spelman* supposes, That men were never sworn in *Homage*, because the doing of *Faalty* immediately (b) follows it. Which he takes to be the Reason why some (c) Learned Men assert that there is swearing in *Homage*.

(a) *Spelman's Gloss. Tit. Homagium.*

(b) *So Eriston de Homages, p. 174. b. & quant. l' Homag' serra pris tost soit pris le serment, &c.*

(c) *Nonnulli docti asserunt in Homagio jurari.*

But if it will appear that God has been invoked or appeal'd to, for the truth of the Homage, this I take to be as much an Oath, as if the Hand be laid upon a Bible. And for this I have the Judgment of (d) *Bishop Sanderson*, who holds the formal Reason of an Oath to consist in the Invocation of God:

(d) *Sanderson de Juremeni Obl. pag. 85.*

That this may be by Signs without Words, and by Words without Signs: And particularly he mentions, *So help me God*, as Words of Swearing. That these Words were used at the doing Homage to the King, when by reason of his Sovereignty, and not barely upon the account of Tenure, appears beyond Contradiction by the very Form of Homage done by the *Temporal Lords* cited by *Sir Henry* himself:

C

Agreeing

Agreeing with that which Mr. Prynne supposes to have been used at the Coronation of R. 2.

Sir Henry Spelman's Form.

Mr. Prynne's.

Gloss. f. 296.

Prynne citing this very Form out of the *Liber Regalis* has [To live and die with you.] Prynne's Signal Loyalty, p. 247.

of Folk. So God me help.

I N. N. become your *Liege-man* of Life and Limb, and of earthly Worship, and Faith and Troth I shall bear unto you, to live and die.

[Against all manner

I become your man *Liege* of Life and Limb, and Troth and Earthlyche Honour to you shall bear [against all men that now liſſe and die. So help me God, and Holy Dome.

3. That the Oath of *Fidelity* to the King was an Oath of the nature of *Homage*, were to be believed, if it were only for the Proof that there is, that *Homage* to the Subject, was in all Ages held to be of the nature of the *Fidelity* due to the King ; as appears in the Exception or Salvo in the Oath of *Homage* to the Subject, of the *Faith* owing to the King.

The constant Form of *Homage* to a Subject was this :

' I become your Man from this day forward, of Life, and of Member, and of Worldly Honour, and Faith to you will bear ;

' for the Lands which I claim to hold of

West. a. c. 44. Littleton Sect. 85. Britton de Homages, p. 174. Lib. Rub. in ' you. Saving the Faith which I owe to our Lord the King.

secio. Omnis homo debet fidem Domino suo de Vita & Membris suis, & terreno honore, & observatione Consilii sui per honestum & utile salva fide Deo & terre Principi.

And the Red Book in the Exchequer calls this *Homage* to the Lord, *Faith* of Life, and Member, and Worldly Honour, &c.

This *Faith* of Life, and Limb, and Worldly Honour, was due to the King, without exception of any man: As it was due to the Lord with the exception of the King.

By the Confessor's Law before cited, they were to be faithful to the King as their Lord, and to Defend his Kingdom, and Person, against Foreigners and Enemies, without exception of any Person whatever :

when (a) according to this Author, another Person had the Legal Right. That to W. 1.

(a) Vide Inf.

is but a Declaration, or rather Explanation of the former.

Nor

Nor do either of them differ materially from the Form above-mentioned, enacted under *Edmund*, King of the *East-Angles*.

But, as I take it, none of the Laws for Oaths imports more than what *Neubergensis*, who wrote about the time of *R. 1.* gives, as a short Definition of the Oath of Allegiance, or Fidelity, due to the Kings of *England*; Unless it be, that those Laws express what is to be presumed to be implied in *Newbergensis*, concerning the *Kingdom*: speaking of the Submission made to *Hen. 2.* by the Nobility of *Scotland*, he has these Words.

Neubergensis,
Lib. 2. c. 37. *Regi Anglorum tan-*
quam Principali Domino
hominum cum ligantiâ, i. e. solemn
cautione standi cum eo, & pro eo, con-
tra omnes homines, Rege propriè præ-
cipiente, fecerunt.

They, by the Command of their own King, did *Homage*, with *Allegiance*, that is a solemn Caution of standing with him, and for him, [against all men.

Tho' this do not mention the *Kingdom*; a Record 29. E. 1. giving an Account of the Oaths of *Fidelity* Sworn by the Kings of *Scotland*, to the Kings of *England*, from before the time of *W. 1.* downwards to the time of *Hen. 3.* inclusive, of the last Oath, says,

29 E. 1. m. 10. d. *Apud Lincoln.*

Quo se principaliter astrinxit quod in ipsius Regis & Regni Angliæ detrimentum nihil debeat penitus attemptare.

By which he principally bound himself, never in the least to attempt any thing to the Detriment of the King, and Kingdom of *England*.

This Oath of *Fidelity*, as appears by the course of Authorities; and particularly by Record 1 E. 1. was taken (a) to the King as the Swearers *Leige*, and true and lawful Lord, and King. And indeed, for such the Kings were received at their Coronations, as appears by the (b) Close Roll, 1 R. 2.

(a) Rot. Pat. 1 E. 1. Pars 2. m. 2. *Prelati Comites proceres ac Communitates Regni nobis tanquam Domino suo Ligio & Regi Juramenta fidelitatis, &c. præstiterunt.*

(b) Rot. Claus. 1. R. 2. m. 44. After the Archbishop had given an Account to the People of the King's Swearing, and Inquiring *ab eodem populo si ipsi consentire velent de habendo ipsum Regem Dominum suum ligeum & ad obediendum tanquam Regi & Domino ligeo.*

Nor was this only at Coronations, at Leets, and at Sheriff's turns: but sometimes there were special Commissions for taking it in the several Counties of *England*: As was particularly (a) 45 H. 3. where the King declares, That he does it in ease of the People, and to prevent their Trouble and Expences in coming to *London*: Which seems to have regard to that part of the Constitution, mentioned in the *Confessor's* Law, requiring the Oath to be annually taken in a *Folcmote*, or *Great Council* of the Kingdom.

(a) Rot. Par. 45. H. 3.
m. 12:

The Form of the Oath of Allegiance which Sir Henry Spelman exhibits, as of later Date than that common Law-Oath, is this:

(b) Spelman's Gloss. Tu J. S. Furabis, &c. Fidelis & legalis. Vide the Customary of Normandy, c. 43. cited by Sir H. S. Ligantiam autem sive Legalitatem de omnibus hominibus suis totius provincie debet princeps habere ex quo ei tenentur contra omnes homines qui mori possunt aut

vivere proprii corporis præbere consilii & auxilii adjuvamentum, & ei se in omnibus innocuos exhibere, nec ei adversantium partem in aliquo consovere. Ipse etiam eosdem tenetur regere, protegere, ac defensare, eosque secundum iura & consuetudines & leges Patriæ pertractare. Vid. The Oath sworn by the King of Scots to E. 1. Knighton, fol. 2483. Jeo ferra feal & leal, & jei & lealte porteray au Roy Dengleterre Edward & a ses heirs, de vit, & de membre, & de terrene boner contre totez gentz que puiroint vivre ou morire. Et james per nulli armes ne porteray ne en conseil ne en eyd ferra contra Luy, ne contre cez heirs pur nule cas que poet avenir, &c.

(b) You J. S. shall swear, that from this day forward you shall be faithful and loyal to our Lord the King and his Heirs, and shall bear Faith and Loyalty to him of Life and Member, and worldly Honour: And that you shall hear of no Evil or Damage against them, which you shall not prohibit to your Power. So help you God.

Here is an Addition of [Heirs,] and Omission of [the Kingdom.] But as no one can become the Man of another more, than by devoting his Life, Members, and Worldly Honour and Estate to his Service: This is the true *Homage*. And he to whom we swear to pay this, against all other Persons whatsoever, who would do him *Evil*, or *Damage*, is thereby effectually recognized to be the only *Lawful* and *Rightful Prince*; and the Pretences of all others are thereby abjured.

Whether any certain Form of *Fidelity* to our Princes were fixed by the Common Law; or whether, as seems most probable, the Words were variable, keeping to the Substance: Certain it is, That the Oath of (a) *Obedience* (or *Allegiance*) required by the Stat. 3 Jac. 1. c. 4. does not in the least set it aside, only gives a Power upon occasion to administer a new and more explicit Oath.

(c) So styled in the Stat.
7. Jac. 1. c. 6.

In that Oath which is so well known, that I need not recite it at large.

I. It is sworn, that the King for the time being is *lawful and rightful King*.

II. There is an exprefs Abjuration of the pretended Authority of the Pope of *Rome*; which if this Gentleman had thought of, he would not have so peremptorily asserted, That an Oath of Abjuration is *altogether new and strange in England*.

III. There is an exprefs Engagement to the Defence of the King's Person to the uttermost of the Swearers Power, against all (b) *Conspiracies and Attempts whatsoever*. This by the words of the Oath reaches to his Successors, and therein to their present Majesties.

(a) Tho' this seems restrained to such as may be encouraged by the See of *Rome*, there is added, [or otherwise.

If the Considerer had attended to this, surely he would not have maintain'd, That an imply'd Promise of Defence, (if so much be imply'd in an Oath to be faithful, and to bear *True Allegiance* to *Princes*, barely as *Possessors* of the Throne) is is all that has secured this Government for many hundreds of years.

Pag. 30.

IV. By the Oath enjoyned 3 Jac. 1. the Party was obliged to discover all *Treasons, and Traiterous Conspiracies*, which he should know or hear of, *against the then King, or his Heirs*.

Now perhaps, here our Author might equivocate and say, That an Endeavour to restore his *Rightful King*, could be no Traiterous Conspiracy against the *Possessor*. But he ought to consider that this Oath, as did the old Oath of *Fidelity*, supposes no Man to be *King*, but the *Sovereign Lord and King*, in Possession, or the *King for the time being*, according to the Statute, 11 H. 7. declarative of the Law of the Kingdom.

Before the Oath of Allegiance, Enacted 3 Jac. 1. by the Oath of Supremacy, 1 Eliz.

1 Eliz. c. 1.

1. The Queen is acknowledged for *only supream Governour of this Realm*.

2. There is a *Renunciation, or Abjuration*, of the Power of any Foreign Prince.

3. There is an Assurance, not only to bear *Faith and true Allegiance*, but to defend all Jurisdictions, &c. belonging to the *Queen*, her Heirs and Successors.

So that whoever has taken that Oath, is obliged to recognize their present Majesties for the *only Supream Governours of this Realm*; and to defend all *Jurisdictions, &c. belonging to them*.

Now

Now let us see whether the Caution to the Government required by the Act of Parliament 1 *W. M.* comes up to those of former times: And whether the Common-Law Oath of Fidelity is yet in force.

The Act for declaring the Rights and Liberties of the Subject, and settling the Succession of the Throne, having recited Evidences of the late Kings Endeavours to *subvert and extirpate the Protestant Religion, and the Laws and Liberties of this Kingdom*, declares, that their said Majesties *having accepted the Crown and Royal Dignity, did become, were, are, and [of right ought to be, by the Laws of this Realm, our Sovereign Leige Lord, and Lady, King and Queen of England, France and Ireland, and the Dominions thereunto belonging* 'In and to whose Princely Persons the Royal State, Crown and Dignity of the said Realms, with all Honours, Styles, Titles, Regalities, Prerogatives, Powers, Jurisdictions and Authorities to the same belonging and appertaining, are most fully, *rightfully*, and intirely iavelted, and incorporated, united, and annexed.

After which follows an Entail of the Crown: 'And *thereunto* the 'Lords Spiritual and Temporal, and Commons, do in the name of 'all the People aforesaid, most humbly and faithfully submit themselves, their Heirs, and Posterities for ever; 'and do faithfully promise that they will 'stand to, maintain, and defend their said Majesties, and also the said Limitation and Succession of the Crown, herein specified and 'contained, *to the utmost of their Powers*, with 'their *Lives, and Estates*, against all Persons whatsoever that shall 'attempt any thing to the contrary.

N. This is no Temporary Variation, as the Author of the French Pretences examined supposes.

This was after a Declaratory Vote of the House of Commons, 'That *King James* the Second had endeavour'd to subvert the Constitution of the Kingdom, by breaking the 'Original Contract between King and People.

Vote of the House of Commons, 28 Jan. 7. 1688^g.

Whereby, and by the declaring the Royal Dignity entirely and *rightfully* vested in their Majesties, it is manifest, that they not only recognized the Right of their Majesties, but declared against, and renounced all manner of Pretences to *Right* in the late King. And they farther Promise to maintain and defend their Majesties against him, as he attempts to destroy our present Settlement.

This, no doubt, is a good Foundation for an Oath of the like Extent; nor can any man refuse to swear to this Settlement, if required by Act of Parliament, but he must at the same time maintain the Law,

Law, declaring the Right to be in *their Majesties*, to be no good and binding Law. And upon this Account, certainly, it was, that some have in a publick manner censured the declaring the Acts of *their Majesties* first Parliament to be good and binding Laws, as *destructive of the Monarchy*.

The Act of which I am speaking, provides, 'That the Oaths hereafter mentioned, be taken, of all Persons of whom the Oaths of *Allegiance* and *Supremacy* might be required by Law, instead of them : And that the said Oaths of *Allegiance* and *Supremacy* be abrogated.

The Oath of *Allegiance* hereby abrogated, I take to be only the Oath enjoyned 3 *Jac. 1.* For,

1. That Oath is the only Oath which had that Name affixed to it; and that was 7 *Jac. 1. c. 6.* when it was first called the Oath of *Obedience* (or *Allegiance* :) But the Common-Law Oath either was sufficiently known under the Name of the Oath to the King, especially if the place where it was to be taken, and the Persons by whom, were added : Or else, which is most probable, it had another known Name, which was that of the Oath of *Fidelity* to the King.

Thus, not to mention the frequent Instances in History from before the time of *W. 1.* downwards, where the swearing to the King is expressed by doing *Fealty* and *Fidelity*.

I find it upon Record more than once in the time of *H. 3.* That *Fidelity* was sworn to him, as it was particularly in a great Council held at (a) *Bristol*, in the first year of his Reign.

Primores & multi tam Comites quam Barones qui etiam universaliter fidelitatem nobis facientes, &c.

And (b) the Oath of *Recognition* or *Submission* to *E. 1.* at his Accession to the Throne, which the *States* of the Kingdom had required to be taken by the Subjects in his Absence, is expressly called the Oath of *Fidelity*.

In the same Year a Commission was sent to take *Sacramentum Fidelitatis*, (a) the Oath of *Fidelity*, of *Llewellyn*, Prince of *Wales*. And the Commissioners make a Return, giving an Account how far they went, to no purpose, to receive the Oath of *Fidelity*.

(a) *Vide particularly Rot. Claus. 1. H. 3. m. 44 d. Celebrato nuper Concilio apud Bristol ubi convenerunt universi Anglia Prelati tam Episcopi & Abbates quam*

(b) *Rot. Parl. 1. E. 1. p. 2. m. 20. De Fidelitate Arch. Ep. &c. de Hibernia facienda; Reciting, that in England the Eats, Barons, and Commons had taken the Oath.*

(c) *Rot. Pat. 1. E. 1. m. 20.*

(b) And

(a) E Bundel. Breu. An.
1. E 1. m. 1. in Tarris Lon-
don.

(b) And I find a very memorable Record to this purpose, of a Letter of the Bishop of Carlisle to the Chancellor of England, complaining, that the Sheriff of Cumberland had unreasonably distrain'd the Men of his Liberty, to oblige them *Fidelitatem dicto Domino suo Regi debitam facere*, to do or swear the Fidelity due to the said Lord the King; when, as he pretends, they had offered to swear: Wherefore he prays that the Sheriff may be obliged to receive their Oaths; or that others may be commissioned for that purpose.

All which Records make it evident, That the common Law-name of the Oath to the King, was [The Oath of Fidelity.

2. Allegiance is not a Word that will distinguish an Oath to the King from an Oath to the Subject, more than Fidelity will: For tho' Men were not sworn to be *Leige-men* to Subjects, they in *Homage* became so, in effect. And Britton shews,

(b) Speaking of the Salvo when Homage was to other than the Liege Lord. Britton de Homages, p. 174. *Sauve la foy que j'eo doy au Roy & miz autres Seignurages:*

that the chief Lord, or else the first to whom Homage was paid, tho a Subject, was a (b) Liege Lord.

But Ligeance, or Allegiance seems to be used in Law, or strict speaking, as the Cause or Ground of the Oath of Fidelity, and of doing

29 Ed. 1. *supra*.

Homage, where both were done separately and distinctly, as appears by the Record, 29 Ed. 1. where it is said, that the King of Scots

agreed for himself, and his Successors.

Quod facient Homagium, fidelitatem & ligeantiam, ut Ligeo Domino contra, omnem hominem.

That they will do Homage, Fidelity, and Allegiance, as to the Liege Lord [against all men.

Where Allegiance coming after Homage, and Fidelity, must needs be used exegetically, or by way of explanation of what kind, or upon what Account, the Homage and Fidelity were. For it is not to be thought that the Allegiance related to any Act distinct from Homage, and Fidelity; but that the doing these, was in pursuance of the Obligation they were under to their Liege Lord. According to which it has been usual for the Kings of England, to charge the Subjects upon their Allegiance, without any particular relation to doing Homage, or swearing Fidelity: And in this Sence I find Fidelity us'd

as

as synonymous with *Allegiance*, and distinguished from the Obligation of the Oath ; in a Writ from *Hen. 3.* to *Jeffry de Nevil*, charging him to come with Horse and Arms, and all the Men he could get together, to attend the King at *Northampton*, and to assist against all that might disturb the Peace of the Kingdom ; *in fide quâ nobis tenemini, & sub debito Sacramenti vestri nobis præstiti.* ' Upon the Fidelity which you are bound to pay us, and by vertue of your Oath taken to us.

Brev. in Turri London.
8 H. 3.

3. The Oath of Allegiance taken away by the Statute *W. M.* was an Oath which had been required of none, but such as were, or might be ordinarily without any new Law, obliged to take the Oath of Supremacy ; Persons of whom the Oaths of Allegiance [and] Supremacy, might be required : Not [either of them.] But it is certain, that the Common-Law Oath of Fidelity was required, either of every one of the Age of 12, as the Lord Coke says, or rather of 14, according to the *Mirroure*, which the Oath of Supremacy never was. And therefore, that Oath which was to be taken by them, who might not without a new Law be obliged to take the Oath of Supremacy, still remains in force.

4. If it were not the meaning of the Law-makers *W. M.* to leave the Common-Law Oath to the Crown, we must suppose, that they intended to set aside the Security, which the Wisdom of our Forefathers provided, in swearing all the Youth of the Kingdom to be true to the Government : For if the old Oath does not remain, no Oath of Fidelity, or Allegiance, can be required of any under the Age of 18. unless upon the account of some Office, or of Recusancy ; or else to free from the payment of Double Taxes, or to remove suspicion of Disaffection to the Government. But no man can reasonably suppose it the meaning of the Parliament, that the generality of the Nation shall be exempted from giving that common Caution, or Security, to the Government, which had been required of every Freeman, or Youth, at the Age of 12, or else of 14.

3 Jac. c. 4. It shall be lawful, &c. to tender the Oath, &c. to any Person 18 years old, or above.

To proceed ; instead of the Oath of Allegiance, first enjoined by the Statute 3 Jac. 1. The late Act requires only this Form :

' I A. B. do sincerely promise, and swear,
' that I will be faithful, and bear true Allegiance, to their Majesties, King William, and
' Queen Mary. So help me God.

The new Oath.

Not here to shew the Sence too commonly put upon this Oath ; which will be more proper, when I come to shew the necessity of some farther Caution of *Fidelity* : I shall here only observe in short,

1. As I before observed, *Allegiance* is only the cause or ground of Swearing to be *faithful*, not any farther Tie. And therefore they that think their *Allegiance* bound them only to swear to their Majesties as *King* and *Queen*, in fact, think themselves not otherwise obliged to be *faithful*.

2. Here is no Recognition of *Right*, which the Old Laws required fully enough, according to the simplicity of those Times ; and the *Stat. 3 Jac. 1.* required in exprefs Terms.

3. Here is no *Active* Duty sworn to, in *Defence* of their *Majesties*, and the *Kingdom*.

4. Here is no engaging *against all Enemies* to their Persons, and Government : Which *primâ facie* one would think, might prevent all Pretences, That tho' ordinarily Men are obliged to *Defend* their Majesties, the Obligation would not hold against the *late King*, if he should land.

5. This seems to be of the nature of the Common-Law Oath of *Faith*, by which Men swore to be *faithful* and *loyal* to their Lords, and *Faith* to them to bear. Where *Faith*, and *Loyalty*, is plain *Allegiance*, or the Consequence of it. Indeed it is not according to the *Allegiance* due to the *King* ; and therefore the Law provided no *Salvo* to this Oath, for the *Faith* due to the *King* ; as there was in *Homage* ; that being of the nature of the Subjection due to the *Kings* of *England* : Neither, as I shall afterwards shew, is the *Allegiance*, which many who take this Oath suppose to be all that is intended by it ; the *Allegiance* due to the Crown of *England*.

Instead of the Oath of *Supremacy*, we have this Form :

' I *A. B.* do swear, that I do from my Heart abhor, detest, and *abjure*, as impious, and heretical, this damnable Doctrine, and Position, that Princes excommunicated, or deprived by the *Pope*, or any Authority of the See of *Rome*, may be Deposed or Murdered by their Subjects, or any other whatsoever.

' And I do Declare, that no *Foreign Prince*, *Person*, *Prelate*, *State*, or *Potentate*, hath, or ought to have, any Jurisdiction, Power, Superiority, Pre-eminence, or Authority, Ecclesiastical, or Spiritual, within this Realm. So help me God.

Now

Now this Gentleman, certainly, sees at a great distance, who does not observe, That, as much as this Oath is curtail'd, yet here is another Oath for the Security of the present Government, besides the Oath of *Allegiance* to the *present Possessors of the Throne*: Whereas he supposes, that neither this Government, nor any other in the *World* besides, ever required more than such an Oath of *Allegiance*, as he labours to prove sufficient. Pag 30. cited *supra*.

However, here are Four considerable Omissions out of the Oath of *Supremacy*, enjoy'd 1 *Eliz.* which I leave to others to account for.

1. The former Oath requires Men *utterly* to *testifie*, and *declare*, in their *Consciences*, that the *Queens Highness* is the *only Supream Governour* of this Realm, and of all other *her Highnesses Dominions* and *Countrys*.

But there is nothing like this in the new Oath; which we can hardly call an Oath of *Supremacy*. I am sure it is at most but a *Negative Oath of Supremacy*. But where the *Supremacy* rests, is, to use a Law-term, left as it were in *Abejance*, or in the Clouds.

2. That Oath contains an express *Abjuration* of the pretended Authority of every *Foreign Person*, *Prelate*, or *Potentate*.

3. It requires Men to *promise*, that they shall *bear Faith*, and *true Allegiance*, to the *Queens Highness*, *her Heirs*, and *lawful Successors*: and to their Powers shall *assist*, and *defend*, all *Jurisdiccions*, *Priviledges*, *Pre-eminencies*, and *Authorities*, granted, or belonging to the *Queen's Highness*, *her Heirs*, and *Successors*, or *united*, and *annexed* to the *Imperial Crown* of this Realm.

If this Gentleman will shew me these Words in the new *Negative Oath*; or what import as much as they do, tho' sworn to their Majesties only as *Possessors of the Throne*, I shall be very thankful.

4. The former Oath in some measure swore men to the *Succession* of the Crown: Which leads me (in farther Disproof of his Supposition, that the Government never required any other Security from the Oaths of the Subjects, besides an Oath of *Allegiance* to the *Possessors of the Throne*) to shew some Presidents of Oaths to the *Succession*, in their nature *Abjulatory*. Third General Head.

Of these I might give numerous Instances, which yet may seem needless; since he himself cites an Author who is express, That a *Convention* of the *Great Men*, and *Barons* of the whole Kingdom, did *Hommage*, and swore *Fidelity* to *William*, Son of *Hen. 1.* Sim. Dunelm. Anno 1116.
cited Pag. 10.

I shall not here stand to prove, That under these general Words the *Commons of England* were comprehended : but shall observe from him, That at this time *William*, the Son of *Robert*, *Hen.* the 1st's Eldest Brother, was alive.

So that here was,

1. An Oath of *Fidelity*, besides what was taken to the *Possessor*.

2. An Oath in its nature *Abjuration* ; the Common-Law requiring all Men, when the Succession was settled, and secured by the Oaths of the Subjects, to swear to the Successor as to the true

(a) So the Oath to *H.* the Son of *H.* 2. *Salva fidelitate debitâ Patri viventi*, mentioned in the Record, 29 E. 1. apud *Lincoln*. So An. 1252. in the 36th of *H.* 3. *Universalis Communia Civ. Lond. fecit fidelitatem Domino Ed. salva fide Dom. Regis Lib. de Antiquis Legibus in Civ. Lond. Pag. 68.*

Leige Lord ; with a (a) *Salvo* only for the Fidelity due to the King : And to defend him against all other Persons whatsoever, who would injure his Person, or diminish the Rights of the Crown, or *Kingdom*, to which he was chosen to succeed. And if *William* the Son of *Robert* should have been a Competitor for the Crown with *William*, the Son of *Henry* 2 ; by vertue of this Oath, the Nation had been obliged to fight against the Elder Brother's Son, tho' present in Person.

RoA Parl. 38. H.6. n. 26.

Of the like nature with this, was the Oath of Obedience to King *Henry* the Sixth, the Queen, Prince *Edward*, and the Heirs of the King's Body.

Tho' *Richard* Duke of *York*, Father of *E.* 4. had, according to the Modern Notion, the *Divine Right* of Succession.

And whereas the Nation did effectually *Abjure* *Richard*'s Pretences; he himself had done as much before, swearing in these Terms :

Vide the Oath at large, Stow. f. 395, 29 H. 6.

' I *Richard* Duke of *York*, confess and beknow, that I am, and ought to be, humble Subject, and Liege-man, to you my Sovereign Lord King *H.* 6. and owe therefore to bear you Faith, and Truth, as my Sovereign Liege Lord, and shall do always, to my Lives end, &c.

It appears farther in fact, that tho' *Richard* bore Arms against *Hen.* 6. he did it at first only out of pretence of redressing Grievances; but never laid Claim to the Crown as his Right, till he had *Hen.* 6. in his Power. No Man therefore can say, that the presumable meaning of this Oath, was, That he swore to *Hen.* 6. only as to a King in Fact. And that he might well take himself to be the Sovereign *Leige Lord* of the Kingdom, when he swore that *Hen.* 6. was, and ought so to be.

But

But were there any question, Whether the Oaths taken in former times for securing the Successions, agreed to by the *States*, or People of *England*, were in their nature *Abjutory*; I think there is no possibility of doubt, but such were Enacted more than once in the Reign of *Hen. 8.* when the Foundation of the *Reformation* was laid, and secured, by the Oaths of the Subject.

And indeed, the Oaths of *Supremacy* are so plain *Abjurations*, and so great *Securities* to the English Government; that one would think, no body but one who *considers* so little, or so much as on one side, as this Author, could maintain, That an Oath of *Allegiance* to the Possessors of the Throne, has been that which secures all other Governments in the World besides, and that which has secured our own, as well as any other, for so many hundreds of years.

Page 30.

Yet, since nothing but love to Popery, can be thought at the bottom of the Objections against our present Settlement; perhaps, this Gentleman may be one, who thinks no part of the Security of the English Government to lie, in maintaining the Supremacy of the Crown against the Usurpations of the Pope. But for certain, *Parliaments* in the Reign of *H. 8.* judged it for the Security of the Government, that the Subjects should be obliged to take such Oaths, both in relation to the Succession, and the Regal Supremacy, as this Author inconsiderately affirms, to be altogether new, and strange in England.

Page 2.

By the 25th of *H. 8.* the Marriage with *Katherine*, Mother to Queen *Mary*, was declared void, and the Marriage with *Ann*, Mother to Queen *Elizabeth*, declared lawful, her Children made inheritable, according to the course of Inheritances, and Laws of this Realm: First, to Males; then to Females: And it was made Treason, by Writing, Print, Deed, or Act, to attempt any thing to the Prejudice of that Settlement. And there was enacted the substance of an Oath to be taken throughout the Kingdom, upon the Penalty of Treason, truly, firmly, and constantly, without fraud, or guile, to observe, fulfil, and maintain, defend, and keep, to their Cunning, Wit, and uttermost of their Power, the whole effects and contents of that Act.

25. H. 8. c. 1.

By the 26th of that King, the following Form was Enacted:

26 Hen. 8.

'Ye shall swear to bear Faith, Truth, and Obedience alonely to the King's Majesty, and to his Heirs of his Body, of his most dear and entirely beloved lawful Wife Queen *Ann* begotten, and to be begotten. And further, to

Mother of Queen *Eliz.*

the

the Heirs of our said Sovereign Lord, according to the Limitation in the Statute made for the Security of his Succession in the Crown of this Realm, mentioned and contained ; and not to any other within this Realm, nor Foreign Authority. And in case any Oath be made, or hath been made by you to any person, or persons ; that then ye repute the same as vain and annihilate : And that to your Cunning, Wit, and uttermost of your Power, without Guile, Fraud, or other undue meaning, ye shall observe, keep, maintain, and defend the said Act of Succession, and all the whole Effects and Contents thereof, and all other Acts and Statutes made in Confirmation, or for Execution of the same, or of any thing therein contained. And this ye shall do against all manner of Persons, of what Estate, Dignity, Degree, or Condition soever they be. And in no wise do, or attempt, nor to your power suffer to be done, or attempted, directly, or indirectly, any thing or things, privily, or apertly, to the lett, hindrance, damage, or derogation, thereof, or of any part of the same, by any manner of means, or for any manner of Preence. So help you God, and all Saints, and the Holy Evangelists.

28 Hen. 8. v. 7. By the Statute 28 Hen. 8. the Marriages with Queen Katherine and Queen Ann, are declared unlawful, and the Children illegitimate ; and the Crown is settled upon the Issue of the Body of Queen Jane, Mother of King E. 6. and for lack of such Heirs, to such person and persons, as the Kings Highness shall limit, and appoint to succeed to the Crown, by virtue of the said Act.

It was farther provided, 'That if any of the King's Heirs, or Children, should usurp the one of them upon the other in the Crown of this Realm, or claim, or challenge the King's Imperial Crown of this Realm in any other Form or Degree of Descent, or Succession, than is there limited ; or if any Person or Persons to whom the King should give, or dispose his said Crown and Dignity of this Realm, or the Heirs of any of them, do at any time demand, challenge, or claim the said Crown of this Realm otherwise, or in any other course form, or degree, or condition than the same, should be given, disposed, and limited to them by the King, by Virtue and Authority of that Act, &c. that then all and singular the Offenders in any of the Premises, and all their Abettors, Maintainers, Favourers, Counsellors and Aiders herein, shall be esteemed and adjudged High Traitors to the Realm : And as well the said Heirs and Children, as every other Person and Persons, to whom the King should limit the Crown, and every of their Heirs, for, every such Offence, shall lose and forfeit all such Right, Title, and Interest, that they may claim or challenge

‘ challenge to the Crown of this Realm, as Heirs by Descent, or by
 ‘ reason of any Gift, or Act that shall be done by the King, for
 ‘ his or their Advancement, by Authority of that Act, or otherwise,
 ‘ by any manner of means or pretence whatsoever.

And an Oath, in substance the same with
 the former, and very little differing in words,
 is required of the Subjects, according to that
 Settlement; and, according to the farther
 exigency of the time, Recognizing the King
 for *Supream Head in Earth, under God, of the*
Church of England.

Ye shall bear Faith,
 Truth, and Obedience a-
 lonely to the King's Maje-
 sty, Supream Head in Earth
 under God of the Church
 of England.

In the same Parliament a Law was made,
 requiring every one in Office to swear, That

28 *H. 8.* cap. 10.

‘ he from henceforth shall *renounce*, refuse, re-
 ‘ linquish, or forsake, the *Bishop of Rome*, and his Authority, Power,
 ‘ and Jurisdiction. And that he shall never consent, nor agree, that
 ‘ the *Bishop of Rome* shall practise, exercise, or have, any manner of
 ‘ Authority, Jurisdiction, or Power, within this *Realm*, or any other
 ‘ of the King's Dominions; but that he shall *resist* the same at all
 ‘ times, to the utmost of his Power. And that from henceforth he shall
 ‘ accept, repute, and take, the King's Majesty to be the only *Supream Head*
 ‘ in Earth of the Church of England.

It seems none of these Forms were found full enough to obviate
 the Evasions of *Subtile Swearers*, and exclude the pretended *Right* of
 the See of *Rome*. And therefore 35th *H. 8.* to the *Renunciation* of the
 Power of the See, and *Bishop of Rome*, and *Adjuration* to the Set-
 tlement made 28 *H. 8.* and then confirmed in the principal part, with
 some additional Provisions; these words were added:

‘ [*With my Body*,] Cunning, Wit, and uttermost of my Power,
 ‘ I shall observe, keep, maintain, and defend all his Majesties *Styles*,
 ‘ *Titles*, and *Rights*, with the whole Effects and Contents of the Acts
 ‘ provided for the same, and all other Acts and Statutes made or [*to*
 ‘ *be made*] within this Realm for that purpose; and in derogation,
 ‘ extirpation, and extinguishment of the usurped and pretended Au-
 ‘ thority, Power, and Jurisdiction of the See and Bishop of *Rome*.

And it is observable, that tho' that Act continued, the Illegitima-
 tions upon the Ladies *Mary* and *Elizabeth*, yet in case the King and
 Prince *Edward* should die without Heirs of either of their Bodies,
 then the Crown was entailed successively upon the two Ladies; but
 the Interest of either was to determine, if they did not perform such
 Conditions as the King should limit. And in case of failure of Issue,
 or in performance of Conditions, lest the Realm should be destitute of a
 lawful

(30)

lawful Governour, the Crown was to go to such Person or Persons as the King should appoint in the manner there directed.

From which Statutes of the time of *Hen. 8.* concerning Oaths to the Crown, and the Settlements of it, I may observe,

1. That when an Oath was appointed by due Authority, they who administered it were not always obliged to a set Form of Words, keeping to the Substance: as appears by comparing the Statutes, 25 and 26 *Hen. 8.*

2. That Oaths declarative of Right have been held useful and expedient, appears by the Statutes 28 *H. 8. c. 7.* and *c. 10.* By the first of which the Subjects were to swear the King to be *Supream Head* in Earth under God, of the Church of *England.* And by the last they were to swear to *accept, repute, and take the King so to be.*

3. That Parliaments have had the same Judgment of Oaths of *Abjuration*, is evident, by their sometimes swearing to one Rule of Succession, then to another; contrary to that; and to defend that Succession to which they swore, *against* all manner of Persons whatsoever.

And as these were implied Abjurations, they against the See of *Rome* were as express as Words could make them.

4. That, in the Judgment of those times, implied *Abjurations* were as binding, as the Express, is not to be doubted: Since it is certain, that it was the full intention of those Parliaments to bind the Subjects to those Settlements, without possibility of Evasion.

5. That Acts of Settlement were thought to govern the Oath of Allegiance, and to make the *Heirs* to whom it was to be due, after the determination of the Interest of the then King.

6. That the Right to the Crown in Reversion, or Remainder, was then held *forfeitable*; and determinable, even after Possession, upon Non-performance of Conditions.

7. That if the Person, who, according to our *de facto* men, would have been King or Queen immediately upon the Death of *H. 8.* should take Possession of the Crown, contrary to an Act of Parliament, such Person might be a *Traitor* to the Kingdom.

8. That supposed Bastardy was held no Impediment to an *Election* or Settlement by Parliament, tho' it was to a Descent.

9. That it was not at that time thought, that any body in particular, who could not claim under an Election, or Parliamentary Settlement, could be *lawful King.*

10. The Reason why the Authority of the See of *Rome* was *Abjured* expressly, and that of the Person who stood next (according to what some think the settled Rule of Succession) only by Implication, seems

to be, that the Authority of the *Pope* was believed by many : But no one in particular was reputed to have a Right, contrary to what was settled in *Parliament*. And therefore there was no need to swear against it directly. And yet this was fully enough, in effect, when they swore a Marriage lawful. while another to whom the King had been married, was alive, and had Issue to claim a Right of Succession, contrary to the Settlement.

11. Tho' every Man was bound to defend the Settlements to the uttermost of his Power, it should seem some Men thought themselves exempted from defending with *their Bodies*, or fighting for either side : And therefore the Statute 35 H. 8. adds the words, [*with my Body*.]

12. Notwithstanding former Oaths, in some of which all manner of Attempts to alter the then Settlements of the Crown seem precluded; *Parliaments* judged those Oaths to bind the Subjects only in their private, not in their Politick, and Legislative Capacity. And therefore; thought they might without sin concur in the Repeal of those Acts, against which they had sworn never to attempt any thing.

13. If an Oath should now be required, to maintain, and defend with *their Bodies*, the present Settlement of the Crown, against all persons whatsoever ; and to maintain the Incapacity of a *Popish Prince*, (who would promote the usurped, and abrogated Authority of the *Bishop of Rome*) to inherit, possess, or enjoy the Crown and Government of this Realm ; created, or declared, by the Statute 1 *W. M.* who, but our Considerer, would say; That such an Oath were *New and Strange*? when the Law 1 *W. M.* is so manifestly one of those Laws, which they who took the Oath 35 H. 8. if now alive, were, by vertue of that Oath, bound to maintain ; which is a matter very well worth the Consideration of the *Roman Catholicks* of *England*.

IV. Whoever considers what I have already shewn, of the nature of the Oath to the Crown, required by the *Constitution*, generally of all the Subjects of *England*; and what farther *Securities* from the Oaths of the Subjects have been required, upon occasion ; will think it to no great purpose to examine the Circumstances of those Times, when this *Gentleman* supposes, that there was as much need of an Oath of *Abjuration* as now.

However, the observing his Mistakes in the History of this Realm, may give a fit handle for the establishing, or hinting, of some useful Truths.

1. Of the History of former Times relating to the present Case.

Page 4. *The Line of Succession, he says, hath been as frequently interrupted in England, as in any Hereditary Kingdom in the World. And therefore there had been as much need of an Oath of Abjuration here, as any where, and yet we have never had one.*

This hisbold Negative, I think I have sufficiently disproved : but would gladly know of him what he means by an *Hereditary Kingdom*.

If he means, as without doubt he does, a Kingdom, where, of right, in-all cases, the Succession ought to go to the next in the Line ; and that every Interruption of such Succession, is contrary to the Constitution : Then I may say, and shall shew him in its place, that he knows nothing of the Constitution of this Monarchy : Which, as a witty Author long since observed of the Kingdom of Israel, is in respect of Stock, or Family, Hereditary, as to Persons, Elective.

And if this has been the *known Constitution* ; then Interruptions of the Line, provided the Family were kept to, could not require any other Abjuration, than what was contained in the common Law Oath.

He tells us, he will not run up beyond the Conquest, and what Right William the Conqueror had to these Kingdoms ; he says, every body knows as well as any body.

But I may tell him, he himself does not, with all his Pomp of Reading. And if he were not byassed by slavish Principles, he would have attended to the plain Evidences, which could not but occur to any diligent, and impartial Enquirer, proving, that

Page 4. *W. 1. had a better Title than Conquest, or the Promise of the Confessor : For that, being quali-*

fied by his own Affinity, tho' a Bastard, and in his Wife's Consanguinity, as she was descended from a Daughter of King Alfred ; he was chosen Successor in a Parliament, or Common Council of the Kingdom, in the life-time of the Confessor. The time and circumstances of which, I may shew him in due time ; however shall give him two Authorities to animate his farther Enquiry.

William himself, in one of his Charters, has this Style :

Monast. 1. Vol.
f. 48.
jure factus.

Ego W. Rex Anglorum hereditario

I William, made King of England by right of Inheritance.

To understand how this was, take the words of *Ordericus Vitalis*, an Author of sufficient Antiquity.

Ord. Vital. l. 492.

Edwardus propinquo suo Willielmo Duci Normannorum, primò per Rodbertum Constuar' Summum Pontificem; postea per eundem Heraldum, integram Anglici regni mandaverat concessionem: ipsumque, concedentibus Anglis, fecerat totius juris sui heredem.

' Edward had sent an Embassie
' to his Kinsman William Duke
' of the Normans, first by Robert
' Archbishop of Canterbury; then
' by the same Herald, acquainting
' him with the entire Concession of
' the Kingdom of England: and
' had made him Heir of all his
' Right, with the Consent, or rather
' Concession, of the English.

It is very observable, that as this Author uses *Concessio Regni*, and *concedentibus Anglis*, he seems to refer to the (a) *Standing Rituals* for the Coronations of the Kings of England, before the time of *W. I.* and since, agreeing in substance; according to which, the People, being asked by one of the Bishops, whether they would subject themselves to such a Prince, and obey his Commands? Answer, *Volumus, & concedimus*, 'We will, and concede, or grant.'

(a) *Coronatio H. l. 494*
West. Anno 1100. agreeing
with the Coronation of King
Ethelred, Anno 989. *Bib.*
Cotton. sub Effigie, Claudii,
A. 3.

This Gentleman, out of his great Skill in History, tells us, that (b) 'it is manifest beyond dispute, that when the Conqueror, as he calls him, came to the Crown, the Right Heir was alive: who was Edgar Atheling, the Son of Edward, Grandchild of Edmond Ironside. This Edgar, says he, was not only Heir to the Crown by *Legal Descent*; but design'd to succeed Edward the Confessor, by him himself; and sent for, for that purpose from abroad.

(b) Page 5.

If he had been as skill'd in Story, as he would be thought, he might have remembred what is written of the famous Monk *Gustmond*, who told *W. I.* that according to the Laws of the Hebrews, and of other Nations, (c) *Edgar Atheling*, and several others, descended from the Line of the Royal Stock, were Heirs of the Crown of England: So far was he from thinking the Right fixed in *Edgar* alone.

(c) *Ord. Vit. f. 323. A.*
Aliquit plures extiterunt Reges
Angliae

Besides; this Gentleman might have met with Proofs, that tho' *Edgar*, together with others of the Royal Stock, were qualified for an Election, he could not have a *Right of Descent*; being descended from a *Bastard*: For, to name one Authority of many:

(a) *Tho. Rudborne Hist. Major Winton nuper Ed. Ethelred dictus Unredi, &c. cuiusdam Ducis filiam nomine Algyvam accepit in Concubinam, ex qua genuit filium nomine Edmundum Ironside.*

Page 7.

declared upon his Death-bed, that it was not his to give. He wisht it indeed to his Son *William*, but left it to God's Providence; and

Vide Ord. Vital. and Camden's Brit. f. 104.

Vide etiam Selden's Notes upon Drayton's Polythion.

Page 8.

Of his own shewing there was no particular occasion for an Oath of *Abjuration* in the time of *W. 2.* continuing during his Reign; there being an express Agreement sworn to by 12 *Great Men* of each side, that whithsoever died first, the other should succeed to all.

Page 8, 9.

He makes a general Reflection upon *English-men*, as guilty of *Inconstancy*, from the supposition that 'they generally engaged to 'bring *Robert*, before they could have time to see whether King *Henry* 'would be as good as his word.

Quia rex jam Tyrannizabat. Mar. Par.

But Readers may chuse whether they will believe him, or the ancient Author, who says, it was because he had begun to play the Tyrant.

But observe how well he follows his Point: 'What, says he, did 'Henry do, with regard both to his Brother *Robert*, and the vigorous 'Prince young *William*, who had sworn severely to revenge his Father's Injuries, and Eyes? Why, he contented himself to Swear his 'own Son, who was also called *William*, into the Succession of *Nor-mandy*, Anno 1115. and of *England*, Anno 1116.

Supposing that the generality of his Readers will not mind the Latin so much as the English; here is not a word mentioned by him, of swearing the People: But as it is worded, it may pass as if his Son only was sworn. And yet one of his own Authors says, 'The Son of King Henry is by all sworn to be made Heir of his Father. *Annales de Morgan.*

And, certainly, when they swore to make him Heir, they believed they had Power so to do. Nor was there colour of believing, that any body in particular had a Right needful to be *Abjured*, when no body could have Right but from them, who had determined their *Election*, as far as their Sovereign Wills could be fix'd.

He thinks to prove from the course of Authorities, that the common Oath of *Allegiance* was twice sworn to *Maud* in the Life-time of *Hen. 1.* If it were, this surely was a different Security from an Oath to the present Possessor. Besides, all Authors agree, that the Oath to her in Succession was conditional: Some say, if *H. 1.* should die without Heir Male, which this Gentleman renders, *Issue Male*. But *Gervace of Canterbury*, who liv'd about that time, says,

Gerv. Dorob. Col. 1337. *Fecit Principes, & Potentes Angliæ, ad-jurare eidem filiæ suæ Regnum Angliæ, si eadem Rex Pater suus H. decederet absque hærede.*

'He caused the Princes and Men of Power in England to adjure the Kingdom to his said Daughter, in case King Henry her Father should die without Heir.

And considering in what sense several were in ancient times lookt on as Heirs, at the same time; and how *Hen. 1.* and his Son *William*, were made Heirs of their respective Fathers. And particularly, that *Hen. 1.* in the Ritual of his Coronation, is said by Paternal Succession to have held his Station delegated to him *hereditario judicio*, 'By an hereditary Judgment; that is, an *Election*, placing him in the Inheritance of the Crown: It can be no great Question but many, at that time, thought they injur'd nobody, nor went against their former Oaths, in chasing *Stephen*; especially after *H. 1.* had, on his Death-bed, as far as lay in him, released and freed the Nation from any Oath taken upon his Account, which might prejudice *Stephen's Election*.

Bib. Cot. sub Es. Cl. A. 3.

(a) Bib. cot. Tit. V.
Spec. A. 19. de Monast. R.
hyng.

a little before his Death, said,

'Ye Nobles and Wise Men ! I produce unto you your Fellow-Soldier Earl Stephen, my beloved Kinsman, noble in his Virtue, and very Religious : (b) as much as lies in me, I appoint that ye receive him for King, by right of Inheritance ; and earnestly intreat, that it may be so.

(b) Regem per me ut jam hereditario suscipiatis & constituo, & sic modis omnibus esse contestor.

The Reasons this Author gives of his being received, are very remarkable, ' Because he was a renowned, and honest Man, and much beloved, and a valiant Soldier, and had descended from the Royal Stock ; the Great Men, and Citizens, being allured by Rewards, and the Clergy fearing, lest if repulsed, he should raise Commotions ; they received him for King of England. For the obtaining which however, he was greatly help'd by the Oath of Hugh Bigot, which he, as the King, Stephen's Uncle had commanded, made upon the Holy Evangelists, before the Clergy, and People ; that he was with the K. at his Death, and heard him granting the Kingdom to his Nephew.

What need was there, at that time, of an Oath of Abjuration of Title in Maud ? which no body but her Bastard Brother Robert, seems to have thought of, till Stephen disoblged the English in the highest degree imaginable.

Vide infra.

Page 13.

But I thank him for his Concessions, that Robert swore to Stephen, because he could not otherwise be in a capacity of serving his Sister-in-Law. And, that he fears, there are many Roberts of Gloster now alive, that have taken the Oaths to their Present Majesties, with no better Design, than to pacitate themselves to do them a shrewd turn when it lies in their way. He adds, *Altho' they*, (which, to be Sence, must be meant of their Present Majesties) *see no Shadow of unfaithfulness, or ill design, in them.*

But certainly here, he goes beyond his Warrant : for, doubtless, their Majesties now see more than a Shadow of the Unfaithfulness and ill Designs of some who have taken the Oaths ; And who, to pursue the Parallel, for which I am beholden to this Gentleman, like their

Vide ib. his Conditional Prototype, hope to justify themselves by the words of an Oath with unusual Loop-holes.

He

He thinks it mightily to his purpose, that Stephen contented himself with the ordinary Oath of Allegiance, tho' Maud was his Competitor.

But he would have done well, somewhere at least, to have shewn what the ordinary Oath was; which if he had done, it would have appeared a sufficient Security against Maud. And so indeed it proved in fact: For as long as Stephen perform'd his part of the Contract, and consequently as long as the Oath to him was in force, Maud was look'd upon as justly excluded the Succession, seemingly at least designed her. But as Authors say, he treated the English Nobility with Contempt, relying upon the Council and Assistance of Foreigners; he performed little of what he had sworn at his Coronation; And as one rightly says, 'In process of time, through the Injustice or Remissness of the Governour himself, Discord arising by little and little, all things of a suddain were confus'd with Dissentions, and Rebellions.

Gerv. Dorob. Col. 1340.
Bromton, Col. 1024. pauca
tenuit.

Gerv. Desidera, &c.

Till these Disorders arose, there was no colour of ground for a particular Abjuration of one who could raise no Competition. And when the Disorders were begun, it was too late for him to attempt to engage the Nation into any Oath, other than what those within his Obedience ordinarily took.

This Gentleman yields, that the Common Oath of Allegiance was taken to Eustace his Son; which was a second implied Abjuration of any pretence which Maud could make; and another Engagement to fight against her, as an Enemy to the King, and Kingdom.

He speaks of the Agreement between Stephen and Hen. 2. but thought not fit to represent it fairly. His Words are,

(a) Stephen began to incline to Peace, which was agreed upon, you know, on condition that Stephen should continue King during his natural Life, and Henry to succeed him.

(a) Page 14.

But (b) Bromton assures us, 'twas not as

(b) Bromton, Col. 1037.

King only in Fact; but *tanquam princeps legitimus*, 'As the lawful Prince; as Henry was to succeed *tanquam hæres Legitimus*, 'As Lawful Heir. And to shew that this did not in the least derogate from the Right of King Stephen, the (c) Charter made thereupon adopts, or constitutes, Henry, Heir to Stephen.

(c) Bromton. ib. Ego
Stephanus Henricum Ducem
Norm. post me successorem

Regni Anglie, & Haredom meum Hereditario jure constitui.

Nor was this any new thing in England: for W. 1. in one of his Charters, declares that the Confessor had
 (a) *Cart. Antiq. in Tur.* (a) instituted him adoptive Heir to his King-
in Lond. C.C. Quo m. in dom.
Regnum suum adoptivum be-
redem instituerat.

No wonder, therefore, that H. 2. took the usual Oath of Fidelity from his Subjects, without any manner of regard had to William, Stephen's Son; who was legally disinherited.

He seems to wonder, that, (b) notwithstanding the Oath the Nation took in general to H's Mother Maud her self; yet Henry succeeded Stephen, without any manner of notice taken of her.

This he would help out with an implied Cession, because she put in no new Claim.

But he either conceals, or has not observed the real Abdication, which had been in her case; the Nation having once intended to have received her for Queen, till she absolutely refused the Condition, in denying to confirm the Confessor's Laws. The knowledge of which Denial being made publick, so animated the People against her, that she ran away in a Fright, and never more durst pretend to what she had so justly forfeited.

H. 2. he says, left his Crown uncontested to R. 1. But that he had it not by a strict Right of Descent, prior to any Election of the States, is very evident from the ancient Historians: For if he had been King by virtue of a Right of Descent; then he would have been reputed King before he was Crown'd:

Bromton, f. 1153. Hoveden, f. 656.

Bromton, Col. 1159.

whereas till then he was held for no more than Duke of Normandy. It was the great Art and Industry of his Mother, which procured Oaths of Fidelity to him. And his Coronation was not as an insignificant Ceremony; but according to the ancient Rituals expressing an Election: accordingly Hoveden says, he was Crown'd by the Counsel, and Assent, of the Archbishops, Bishops, Earls, Barons, and a great number of Milites; which according to the use of the Word in those times, extended to common Freeholders.

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Page 16.

His Master-piece in Story, is to shew, that John had twice rebelled against his Brother Richard; when, as he says, our common Historians confound Actions done at different times:

times : But what is all this to the question of *Abjuring* the Right • a Competitor ? When *John* never pretended to a Right before his Brother, but sometimes pretended only to redress Grievances ; at others, that his Brother was dead, or could never return from abroad to fill the Throne.

He takes notice, that *John* for his Treasons was *abdicatus*, ' Disinherited, and deprived of all Honours, which he might hope for, ' or expect to have from the Crown of Eng- Page 22.
' land : Which he will have to be a famous

Passage for the Bill of Exclusion ; when, as himself contends, *John* was not the next Heir : And, therefore, that was no President for an Exclusion of the next Heir.

' Tho, says he, *John* did actually succeed Page 22. & 23.
' his Brother *Richard* ; tho' *Arthur* had been
' declared Successor to *Richard* ; Tho' it was the Opinion of all the
' World, both abroad, and at home, that *Arthur* was the undoubted
' Heir of the Crown ; tho' many Nobles sided with him ; tho' he
' claim'd the Crown himself openly, and gave *John* abundance of
' Trouble, and alarm'd him daily : Yet did *John* never attempt to
' get him *Abjured* by the Nation, nor to secure himself any other
' way, than by the common Oath of *Allegiance*.

Here is such a formidable number of *Tho's*, that one had need strike off some of them. But I wonder, why *John's* succeeding his Brother, should come into the number ; for that of it self could require no more than the usual Oath, nor, indeed, did any of the other Circumstances. That *Arthur* had been authoritatively declared Successor, I do not remember : That it was the Opinion of all the World, both abroad and at home, that *Arthur* was the undoubted Heir, I am sure is not true : For (a) *Cujacius*, who takes the Right of Representation, which was all that *Arthur* had, to be the Law of England, says, That the Right of Proximity prevails in other Countries ; and particularly, it was the Law (b) of Normandy. But Archbishop *Hubert*, more agreeably to our Constitution, declared in the name of the States, at the Coronation of *John*, That he was chosen meerly upon the account of his supposed Merit ; and that no Man had right to be King without their Choice. And what need was there for the Nation to *abjure* any one's Right, when they did not think a Right fixt in any Person whatsoever, other than what the Nation consented to ?

(a) *Cujac. de feudis, l. 519.* where 'tis called *Mos Britannia*.

(b) Grand Customary, cap. 25. d' Escheance.

Mat. Par. 1 *John*.

He passes over the Reigns of *H. 3.* *E. 1.* and *2.* upon supposition, that neither of them had any Rival to fear; forgetting *Lewis* the Dauphin of France, who was for some time a more troublesome and dangerous Competitor, both to *John*, and his Son, than ever *Arthur* was to either.

This, one would think, our Historian could but have mention'd, were it not for the unlucky Circumstance, that upon the account of that very Competition, the *French King's Advocate* maintained.

(a) *Mat. Par. Addit. l. 281.*

Vacans itaque regnum sine Baronibus ordinari non debuit unde Barones elegerunt Dominum Ludovicum qui ratione uxoris sue, &c.

1. (a) That *John* had been justly rejected by the Barons of England. 2. That thereby the Kingdom became vacant. 3. That the Right of Administring Affairs, or filling the Vacancy, fell into the hands of the Barons, 4. Accordingly they had chosen *Lewis*. And, 5. That he was qualified for this Election in the right of his Wife, who was King *John's* Eldest surviving Sister's Daughter.

He observes, that when *E. 3.* was Crowned, upon the Deposal of his Father, there was no Oath of Abjuration. Nor surely was

(b) *Annales de Gestis Anglor. Bib. Cotton sub Esfig. Clot. D. 9.*

(c) *Knighton, Col. 2350. Gratulabatur quod filium Edwardum post se regnare elegerent, & ei assensum suum, in quantum potuit, attribuit.*

there need, when the States had not left the Father so much as (b) the name of King; but enacted, that he should be called only *Edward of Carnarvan*, the King's Father. Besides, if his Consent could signifie any thing, he himself (c) submitted, and took it very thankfully that they chose his Son to succeed him.

That there was no occasion of abjuring any supposition of Right in *R. 2.* after his being deposed, appears fully enough from his own shewing.

'The Estates of the Realm, says he, Deposed him very solemnly, (even without any notice taken of his Resignation, tho' after he had made it) objecting such and such Crimes as *deserv'd it*; which they might well have spar'd, and surely would have done it, even for pities sake, if they had not intended thereby to exercise a Power they thought *inherent in them*, on such extraordinary occasions.

Here he not only owns, that the States at that time might judge such a Power *inherent in them*; but that if *R. 2.* were guilty of the Crimes alledged, which is not now to be question'd, his Deposal

was

was just. And however R. 2. had resign'd : And then, what need was there of *Abjuring Richard*?

If he had withal remembered (a) that Statute, with the execution of which they had some years before threatned R. 2. he could not have questioned the Power of the States, but would have believ'd that they really had that Power by Law, which they thought *inherent* in them : And that *Hen. 4.* being of the *Royal Stock*, was duly and legally chosen in his stead.

(a) The Statute which they refer'd to is R. 2. when they told him of an ancient Statute, by virtue of which they might abrogate him, and chuse anyone of kin of the *Royal Stock*. *Vide Knighton de R. 2.*

The Reason he gives why he will not trouble his Friend with the Instance of *H. 6.* with regard to *Richard Duke of York*, nor of *E. 4.* with regard to *H. 6.* is very comical.

' Because, you say, there was no need of
' their doing so; since both of them looked
' upon themselves as *Rightful Possessors* of the
' Throne : And what need was there of causing the Subjects to *Ab-*
' *jure* the Right of one who had no Right at that time; nor as they
thought, any time besides ?

Page 24.

Where the only justifiable Reason for Possessors to desire an Oath of Abjuration, with respect to any Competitor, which is the belief of their own Right, his Art would improve against one : And certainly, no Man but this Author would think a Law for such an Oath now, an Evidence that their Majesties thought the right to be still in King *James* ; but directly the contrary.

Yet, tho' his Premises speak only of what the Possessors themselves believed, his Conclusion is upon the general belief in those Times : which will appear to run through all the Times in which he instances : And then, according to his own Confession, there was no need of an Oath of Abjuration in any of those Reigns.

And if the Story of that Time from whence the *de facto* Men fetch their chief Colours were duly weighed, it would in great measure silence this Controversie. I shall here only point at what the Records and History of the Time make evident.

1. *Richard Duke of York*, having never been Crown'd, was never reputed King : And himself had sworn to *Hen. 6.* as the only *Rightful King*.

2. Tho' R. by the Treachery of the *King's Ministers*, after the Death of his wife and warlike Uncles, was advanced to Honour and Authority in the State, till by degrees he fill'd most Places with his Creatures ; got the King entirely into his Power ; and awed the Par-

liament with his Arms; yet he was obliged to take up with a Reversion after *H. 6.* as *Hen. Duke of Normandy* did, after King *Stephen*.

3. When *E. 4.* afterwards claim'd the Crown, he did it not upon supposition that *H. 6.* had not been a true *Legal King*; but had broken the *Contract* established in Parliament between his Father, himself, and *H. 6.* and was unfit to Reign: According to which the Estates adjudged the Possession to *E. 4.*

4. *Edward* the 4th's own Parliaments never held him to have been King, till the Estates had declared him King; notwithstanding his Success against *Hen. 6.*

5. The Acts of all (a) the Parliaments in the time of *H. 6.* except that which was held after a *Readeption* of Power, upon driving out *E. 4.* were held to have been made by good Authority.

(a) *Vide Stat. 1. E. 4.*

* 2. 1. Other than by Authority of any Parliament, holden in any of their times.

6. They never thought that there was more than one King at a time. And therefore from the time that *Hen. 6.* was suppos'd to have been turn'd out for having broken the *Contract*, *Edw. 4.* was in history reputed the only King; *Hen. 6.* was held for an *Usurper*; and his Parliament (b) called a *Pretensed Parliament*.

(b) *Vid. Rot. Parl. 17 E. 4. n. 34. Printed Stat. c. 6.*

7. *Hen. 6.* was not only in his time, before being out upon the supposed Breach of *Contract*, reputed the only Rightful King; but by Act of Parliament (c) 1 *H. 7.* the *Attaindure* of *H. 6.* by a Parliament of *Ed. 4.* is declared to have been against *Honour, Nature, and Duty*; And in another place, *contrary to due Allegiance, and all due Order*.

(c) *Rot. Parl. 1 H. 7. n. 16. Rescriptio H. 6.*

To return to our Author.

Page 4.

'Neither, says he, will it serve to my purpose to instance in *R. 3.* with regard to the Son and Daughter of his Elder Brother, *George, Duke of Clarence*, because he confided so far in the *Attaindure* of the Father, that he had no suspicion of the Children; he *bastardiz'd, depos'd, and murder'd, the Children of Ed. 4.* But he thought the Act of Parliament had secured him against the Family of *Clarence*; and therefore was regardless of them. We have no reason to think he acted out of any better Principle towards them. And it was not then so clear in Law as since, *That the Crown takes away all Defects and Stops in Blood; and that from the time the King assumes the Crown, the Fountain is cleared, and all Attainders and corruption*

* *ruption of Blood discharged.* Which was the Resolution of the Judges in the Case of *Hen. 7.*

Is it not great Pity, that where he would be thought to write so wisely, he wants not only certainty, but truth of Fact, and of reasoning?

1. How can it be said that *R. 3.* depos'd the Sons of *E. 4.* when neither of them was ever *King*, or at that time reputed so to be?

2. If one were *King*, how could both be said to be *depos'd*, unless one lived some time after the other? Whereas they that suppose them murdered, will have both to have been murdered at the same time.

3. He who reads *Buck's History*, would be modest in the Charge of Murder upon *R. 3.* and would impute the Death of one to some natural Cause, and might incline to think the other lived several years after *R. 3's* Death.

3. However, it is certain they were alive when *R. 3.* was Crown'd and yet his *Parliament* did not believe that they had any manner of Right. Nor does it seem to have prevailed so far with the People, that there was any occasion of an Oath of *Abjuration*. For the only Competition which might occasion it, was of *Henry*, afterwards *Hen. 7.* who had no Pretence of Right, but from the Choice of the People, or *States*.

4. There seems no mean Grounds to believe, that the Children of *E. 4.* were justly declared Bastards, by reason of their Fathers *Pre-contract*, in force when he married their Mother.

6. Whether they were Bastards or no, the States thought they had sufficient Authority to declare *R. 3.* to have the only Right to be chosen, because *E. 4's* Children were not fit to Reign; And they thought *R. 3.* the most deserving of the Royal Family.

7. The Maxim declar'd in the time of *Henry 7.* is as awkwardly represented, and applied, as his other Collections.

Year-Book, 1 *H. 7.* f. 4. b.

A Question being put to the Judges 1 *H. 7.* Whether they who had been Attainted in the Reign of *R. 3.* were capable of sitting in Parliament, and resolved in the Negative; their Opinions were ask'd concerning the King himself, who likewise had been Attainted. They Answer,

Year: Book,
1 H. 7.
*Que le Roy fuist per-
sonable, & discharge d'
ascun atteindure, eo facto
gil prist sur lui le reigne, & est Roy.
Town dit, que le Roy H. 6. en son
readeption reignoit son Parlement &
uncore il fuit atteint, & ne fuit reverse
& les autres Justices disont que il ne
fuit atteint mes disable de son corone,
dignitie, terres, & tenemens, & di-
sont que eo facto que il prist sur
luy le royal dignitie deste Roye que
tout ceo fait void.*

' The King is *personable*, or a
' Person capable, and discharged
' of any Attainder *ipso facto*, that
' he takes upon him to Reign, and
' is King. Town says, That H. 6.
' at his Readeption held his Parli-
' ament, and yet he was attain-
' ted, and the Atteindure was not
' reversed. And the other Ju-
' stices said, that he was not at-
' tainted, but disabled from his
' Crown, Dignity, Lands, and
' Tenements: and said, that by
' the very taking upon him the
' Royal Dignity to be King, all
' was void, &c.

That the Maxim here declared does not relate to the Right of Succession, but to the Act of assuming the Royal Dignity, with the Consent of the People, is very plain. The Case of H. 6th's Readeption of Power, after he had been dispossessed by E. 4. and by his Parliament disabled from holding the Crown, being brought as a President for adjudging, that H. 7th's Assumption of the Royal Dignity purged the Attainder he had lain under.

What does this relate to the Duke of Clarence, who was never King? Indeed it contains a great Truth, which was never disputed in ancient Times; which is, That any deserving Person of the Royal Family, was held a Person capable of being *chosen*; and from the time of his being *chosen*, and declared King, all Objections vanished. That this could not relate to a Right of a Descent, but to a bare *assuming* the Crown, upon the *Choice*, or *Submission*, of the People, or States, is evident by the Case then in question; which was of a Prince, who was of a Bastard Branch of the Younger House. And tho' the Bastardy had been removed by Act of Parliament, there was expresse Provision, That the Capacities granted should not extend to the Inheritance of the Crown. Besides his Mother, who if there were any Right of Descent, stood before him upon the Royal Line, was alive at his Accession to the Crown: And if an Attainder had been no Objection against a Right of Descent the Duke of Clarence's Children had that Right before him.

And yet the Nation having generally declared for him, R. 3. was by Parliament adjudged to have acted
 (a) *traiterously* against him, before he had been (a) Rot. Parl. 1 H. 7. 23.
 Crown'd.

From all these Instances, these Three Conclusions are very obvious.

1. That the Oaths of Allegiance to all these Kings, were, as to the only *lawful* and *rightful* Kings; and implied *Abjurations* of all others.

2. That there was no manner of occasion for abjuring any one Person in particular; because it was the settled Judgment of the Parliaments, and People of all those Times, that no other Person besides the *King Regnant* was King, or could be King, till he was admitted by the *States*, or *People*.

3. That it was not bare Possession, or want of Possession, which made any Man more or less a King: For then H. 6. would have been the King after a *Readeption* of Power: And neither E. 4. nor C. 2. would have been the King, while either of them was out of the Kingdom: And every Prince would lose his Authority, while Rebels are in possession of the Power of a Nation.

However, were it admitted that this *Gentleman's Account* is incontrovertibly true, it would appear to any impartial *Considerer*, That he has left the Merits of the Case of an Oath of *Abjuration* untouched: for,

(1.) His suppos'd Instances relate only to the Times when the Person, who, according to him, had the *Legal Right* of Succession, prevail'd against the Competitor: But he offers not the least Shadow of Proof, nor indeed can he, That they who submitted to the other, accounted him, even during that Submission, not to be the only *Legal*, and *Rightful King*.

(2.) As, therefore, it is to be presumed (which also is true in fact) that they thought the Prince whom they obey'd the only *Legal* and *Rightful* Prince; if the Oath required to be taken to him were not thought sufficiently to imply a *Renunciation*, or *Abjuration*, of the Pretences of every other Person whatsoever; they were not only guilty of an Error in Politicks, but of a great Sin, in not improving the Opportunity God had intrusted them with, for securing the Publick Peace.

(3.) If the Oaths of Allegiance had this Defect; to this were to be imputed, the many violent Changes which have hapned in this Government: But,

(4.) Since

(4.) Since the Oath was full enough for any honest Man; and, according to the Simplicity of those Times: And yet the People sometimes forsook the next of the Line, as well as the more remote; it is to be believed, that both the one and the other were deserted by their former Friends, for some thing common to both.

(5.) It does not appear in Fact, that ever any King of England lost his Crown, meerly from a Perswasion generally obtaining, That the Possessor was no *rightful* King, as not being the *First* upon the *Royal Line*; and that the *Competitor* had a Right to be the King, without any manner of *Election*. But the misfortunes of Princes have been imputable chiefly to such Actions as amounted to a Breach of the *Contract* between Prince, and People; or were taken so to be: Or to the belief of extraordinary Merits in the Rival, and prospect of great benefit to the Publick by his Promotion. So that the Liberty which the People thought they had to close with any opportunity of casting off the Possessor, has not been, because the Oath of *Allegiance* did not sufficiently bind them to defend the Possessor, while the Oath was in force; but that they thought themselves really discharged from the Oath by the Possessor's Violation of the *Contract*; or the Superiour Law of the *Publick Good*.

(6.) However it has been in former times, what the Act of Settlement had made very plain, is so confounded by Men, who like the Pope, in order to *Spiritual things*, claim to themselves a peculiar Right to interpret all manner of Oaths; that there is an absolute Necessity not only for a Reinforcement of the Common-Law Oath of *Fidelity*, but for an Oath in express Terms, declaring *their Majesties* to be the only *lawful*, and *rightful* King and Queen of these Realms; abjuring the late King's Pretence of Right, and engaging Men to *Defend* them to the utmost of the Parties Power, *against the late King*, and all other Persons whatsoever. If any thing short of this were sufficient; yet if the Old Oath was *Declarative of Right*, and by undoubted Implication engaged the Subjects to Fight for the Possessor, even *against* him who had been in Possession, upon what, according to our *Considerer*, must have been the only *Legal Right*; and if the present Oath mentions nothing of the Right of *their Majesties*; and many who have taken that Oath, declare with this Author, that it is only as to Possessors of the Throne; This

Page 30.

Omission, to say no more, gives too great Countenance to the Supposition, that they are not our *Legal* and *Rightful* Sovereign Lord, and Lady. And it mightily concerns every one, who believes their Right, to vindicate *their Majesties*, and the Settlement, from so foul an Imputation. Nor

is

is to be presumed, that their *Majesties* will reward Men for thinking them *Usurpers*. Here I shall shew,

1. That they are thought by some only King and Queen in fact ; that is, as those very Men explain themselves, meer *Usurpers* upon the Right of a Prince, whose Right continues.

2. That both, according to the Men of that Notion, and to the Reason of the thing ; no Man, while he believes them to be only King, and Queen in fact, can give any Security of being true to this Government.

3. That he who should refuse to acknowledge the *Right* of their present *Majesties*, and *abjure* the Pretension of the late King, if required by Act of Parliament, ought to be accounted an *Enemy* to this Government.

4. That whoever will give this Security, ought to be reputed a Friend ; till he shew the contrary, by holding or acting, as he had done before.

5. That even an Oath of *Recognition*, without an *Abjuration*, cannot be thought a sufficient Security.

1. The Present Dean of St. Pauls, who may be thought to trim the Notion of a King *de facto*, and dress such an one up in the Cloathes and Figure of a King of Right, Case of Alleg. p. 14. says,

' In Hereditary Kingdoms, he is a *Rightful King*, who has by *Succession* a legal Right to the Crown : And he who has Possession of the Crown without a legal Right, is a King *de facto* ; that is, is a King, but not by Law.

To apply this, he says :

' King James, more I hope, by following ill Counsels, than by his own Inclination, had effectually removed all Prejudices, and Objections against such a Revolution ; excepting the Obligations of Duty, and Conscience. Ibid. Page 48.

So that according to him, notwithstanding all that King James had done, in breach of the *Contract* between Prince, and People ; as the Parliament plainly judg'd ; Duty and Conscience still bind us to him. And he, as being the *rightful* Prince, ought still to have continued the Possession of the Throne.

Then speaking of Circumstances making way for his present Majesty's Accession to the Throne.

' Now, says he, not to dispute the *Legality* of all this, there was nothing so formidable as to prejudice an honest Man against Sub- Page 49.

G

' mission

* mission and Compliance; as there was in the late Times of Rebellion; nothing that could reasonably hinder a Compliance, but * an Opinion that we must never pay Allegiance to any but a *Legal King*.

Page 26.

Before which he had laid it down as a general Rule, that *'a legal and successive Right is the ordinary way, whereby the Providence of God advances Princes to any Hereditary Throne: And this bars all other Human Claims; but yet God may give the Throne to another if he pleases; and this does not destroy the legal Right of the dispossessed Prince.'*

To me, I must needs say, here seems certainty enough to ground an Indictment against the *Dean*, for holding, that a *Legal Right* to the Crown still remains in the *late King*, tho' the Parliament has declared, that the *Royal State, Crown and Dignity are rightfully and entirely invested in the Persons of their Present Majesties*.

Our Considerers knew too much Law to run this hazard; but we may conclude him to be of the same Opinion, not only from what he says of a *legal and immediate Succession*; but from his Concern, that the Government should look upon an Oath of Allegiance to *their Majesties* as *Possessors* of the Throne, while the *Swearers* hold another to have the Right; to be as great Security, as an Oath *Declarative* of their *Majesties Right*.

2. That no Man, while he is of this Opinion, can give any Security of being true to this Government, I shall make very evident:

I. From the Opinions of those Men, upon whose Account, or in consequence of whose Doctrines, the Right of their *present Majesties* is denied.

II. From the nature of the thing.

1. 'Tis a miserable thing to consider, how much men endued with Reason subject themselves to others, who have nothing but Noise and Assurance to entitle them to a *Dictatorship*. But so it is, that when the Doctrine of our Church is to be learnt from its *Articles and Homilies*; the most forward of the Clergy usurp an infallible Chair, and to dissent from what they would impose, is enough to place a man among the *Publicans and Sinners*.

The Popish Doctrine of *Probability* seems improved by these men: And it is not only held safe to act as a few *Great Doctors* advise, but they who go upon other Grounds, must be thought not to *bear the Church*.

Where-

Wherefore, to shew how likely some men are to prevaricate, when they swear *Allegiance* to their *present Majesties*, I shall fairly represent what Sacred Authority they would have, for imposing upon the Government with an empty sound of Words, which are made to signify nothing, or very little.

Yet I cannot but observe, that tho' the Notions are adopted by *Church-men*, they had a *Lay-Father*, which was that man of immortal memory, Sir *Robert Filmer*; of whom the great Dr. *Heylin* did not blush to learn *Politicks*. *Vide Heylin's Certamen Epist. pag. 208.*

Sir *Robert* having, as he thought, fixt an absolute and arbitrary Power in *Adam*, was mightily put to it to derive this down to all Kings at this day, whether they came in by Right, or Wrong.

But this he heals by the present Dean of *St. Paul's* Doctrine of *Providence*.

'Many times, says Sir *Robert*, by the Act of an *Usurper* himself, or of those that set him up, the true *Heir* of the Crown is dispossessed: God using the Ministry of the wickedest men for the removing and setting up of Kings: In such cases the Subjects Obedience to the *Fatherly Power* must go along, and wait upon *God's Providence*, who only hath right to give and take away Kingdoms; and thereby to adopt Subjects into the Obedience of another *Fatherly Power*.

We should be apt to think that when the Subjects are by God himself, by his *Active*, not bare *Permissive Providence*, adopted into another *Fatherly Power*; all the Obedience which was due to the former *Fatherly Power*, becomes due to the present. But Sir *Robert* begs your Pardon for that.

'If, says he, a *Superior* cannot protect, it is his part to desire to be able to do it, which he cannot do in the future, if in the present they be destroyed for want of Government: Therefore it is to be presumed, that the *Superior* desires the preservation of them that should be subject to them: And so likewise it may be presumed, that the *Usurper* in general doth the Will of [*his Superior*,] by preserving the People by Government. And it is not improper to say, that [*in obeying an Usurper*, we may obey primarily the true *Superiour*, so long as our Obedience aims at the preservation of those in Subjection, and not at the destruction of the new Governour.

Anarchy of a mixt Monarchy, pag. 275. last. Ed. pag. 253.

Vide Dr. S's Case of Alleg. p. 12. Nor does it make any difference in this case, to distinguish between what God permits, and what he does.

Directions for Obedience to Government, p. 72.

Here indeed is one thing which Sir Robert's Admirers will find directly against them, in their Application of his Principles to the present Case ; which is, that, with him, no one can be an *Usurper*, unless it be upon the Right of *his Superiour*: Or, as he expresses himself in the Definition of *Usurpation*, *Who hath such a former Right to govern the Usurper, as cannot lawfully be taken away.*

Directions for Obedience, p. 75. last Ed. p. 165.

Since, therefore, the late King never had Right to govern his present Majesty, he cannot be an *Usurper* according to Sir Robert.

However, these men taking it for granted, that both their Majesties are *Usurpers*, apply Sir Robert's Rule, in justifying a sort of Obedience to them, and swearing to it upon occasion, for the Service of him whom they believe to be their true *Governour*; for which they will presume his Consent, contrary to his publick Declarations.

After Sir Robert comes a much greater Man, Bishop Sander-son :

Sander-son de legum hu-
manarum obligatione Praef. 5
Sect. 19.

Sect. 20.

matters of commutative Justice. But that they must remember to do this only as far as *Gratitude* or the *publick Safety* requires; but not upon the account of any *Right* or *Authority* in the *Usurper*; and that they take care to preserve their *Fidelity* to their lawful Prince. To all this he holds, that the *Consent* of the *Lawful Prince* is to be presumed, as it is his Interest to have his People preserved for him :

(a) Ut presentibus rebus
quo salvi sint se quod licet
modeste accomodent.

Sander-son's Case of the
Engagement, p. 111.

And yet he has a *Salvo* for an absolute Promise of this nature, in one of the Exceptions which he takes to be involved in the nature of every Oath, viz. *Salvo Potestate Superioris*. 'So as it pre-
judice not the Power of the Superiour.

De Oblig. Jur. praef. 2.
Sect. 10. & praef. 6. Sect.
12.

Who teaches, That there is a necessity of obeying an *unjust Possessor* of Power, within the Bounds which he sets for Obedience, 1. In the Defence of the Country against Foreign Force, and the Attempts of Enemies. 2. In the administration of Justice. 3. In matters of commutative Justice. But that they must remember to do this only as far as *Gratitude* or the *publick Safety* requires; but not upon the account of any *Right* or *Authority* in the *Usurper*; and that they take care to preserve their *Fidelity* to their lawful Prince. To all this he holds, that the *Consent* of the *Lawful Prince* is to be presumed, as it is his Interest to have his People preserved for him : Provided they comply with the present occasion (a) as *modestly*, that is, as backwardly as may be, and only for self-preservation. Upon this account he held it lawful to be true and faithful to the pretended *Commonwealth*, without King and Lords, so far as not to resist.

If therefore the suppos'd Rightful King command a *de facto*-man to resist the *Possessor* ; according to him, that Command is to be obeyed, notwithstanding the Oath. For tho' he *presumes* the *tacit Consent* of the Prince, that the Subject should take this Oath, provided it be as he directs, with Reluctancy, and not till a Man is forc'd to it ; he never supposes the Obligation to be absolute, till the presumption of the Consent has pass'd so long, that it may be too late to declare the contrary.

*Prel. 4.
Sect. 6.*

Ibid. Sect. 7.

Ibid. Sect. 6.

What he says of the *Irritation*, or making void an Oath, comes up so fully to the present Question, that I cannot but transcribe the most part of it.

De Jur. Obligatione Prel. 7. Sect. 6.

' He who is anothers Subject, is not his own Man, has not Power of obliging himself in those things in which he is subject, without the will of the *Superiour* under whom he is : And therefore ought not by any Act of his to draw upon himself any Obligation without his Consent, either *express'd*, or *reasonably presum'd*. For the Rights of *Superiours* over their Subjects are *perpetual*, by the immutable and eternal Law of *God*. Moreover the Duties of Subjects towards their *Superiours*, and the Right of Obedience and Subjection, are by the same perpetual Law, perpetual and indispensibly obligatory : Which antecedent Obligation (according to our third Hypothesis) hinders the effect of a subsequent Oath, that it cannot oblige. For the Prior Obligation is always a Prejudice to the Posterior, and makes void every Act inductive of a New Obligation contrary to it. Therefore in this case we must say, 1. That a Subject ought not, in those things in which he is subject to another, to swear that he will do any thing, without the at least *pretended Consent of his Superiour*. 2. That if he has sworn, and the thing is not unlawful, he is obliged to do it, *as long* as it does not seem contrary to the *Will, Dignity, or Utility*, of the *Superiour*. 3. That the *Superiour*, if he has once confirmed the Promise of his Subject, by his express Consent, either *antecedent* or *subsequent*, cannot afterwards make it void, or take off its Obligation. 4. That if the *Superiour*, as soon as he should know of the matter, should presently signify to his Subjects his Dissent, openly and peremptorily, and prohibit that which was sworn to be done, that *transitory Obligation* immediately *ceases* ; and that the Subject by virtue of the Obligation of Duty, which is permanent and perpetual, is bound to act to the contrary of what he has sworn.

From

From Bishop *Sanderfon*, to descend to Dean *Sherlock*.

Cafe of Alleg. *Vide*
ſupra.

He has determined, 1. That their *Majeſties* are only *King* and *Queen* in fact. 2. That *God's Providence* has actually given the Authority to their *Majeſties*: But yet, 3. Has not alter'd the *late King's Right*.

However, one would think, that if God has by an *active*, and not *permiſſive Providence*, given the Authority to *their Majeſties*; the ſame *Allegiance* and *Obedience* will be due to *their Majeſties*, which was to the *late King*. But this the *Dean* does not hold by any means: For,

Pref. to the Cafe of Al-
leg.

1. He declares, that he 'prayed for *King William* and *Queen Mary* by name, according to the *Apoſtles* Direction, *To pray for all that are in Authority*; even while he thought himſelf bound in Conſcience not to ſwear *Allegiance* to them: That is, according to himſelf, did not owe it them: For as he rightly ſays, *What I am bound in Conſcience to do, I may ſwear to do*. So that if we take his Example for a Rule, or what he elſewhere ſays muſt be done, a *King de facto* may be in *Authority*; and yet no *Allegiance* may be due to him.

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2. Tho' the *Dean* teaches it to be a Duty to pray for a *Prince*, who has the whole *Government* in his hands, and has power to do a great deal of Good: Yet he ſays, *We muſt take care to do it in ſuch terms, as not to pray againſt the diſpoſſeſſed Prince*.

Page 18.

3. He holds, that there are different Degrees of *Submission*, according to the Degrees of *Settlement*; and 'tho' the *generality of the Nation* ſubmit to ſuch a *Prince*, and place him on the *Throne*, and put the Power of the *Kingdom* into his Hands; yet it may be we cannot yet think the *Providence of God* has ſetled him in the *Throne*, while the *diſpoſſeſſed Prince* has alſo ſuch a formidable Power, as makes the *Event* doubtful.

Ibid.

Upon this Principle the *Battle of the Boyne* brought ſome to take the Oaths: However, theſe Words are not confined to the Forces of Subjects, but take in the Forces of any Foreign Prince, authorized by the *Dean* to aſſiſt a Prince, whom he ſays, *God does not hinder from claiming his Right, when he finds his Opportunity*.

Since

Since, therefore the dispossessed Prince has still a *formidable Power*, as he is back'd by the Power of *France*; the degree of Submission due to their *present Majesties*, ought, according to him, to be different from the degree of Submission due to *Rightful Possessors*.

I must own, in this the *Dean* is not singular; for this, with others of his Doctrines, I find in a *M.S.* of *Obadiab Walker's*, communicated to me by a worthy *Gentleman* lately deceased, who had been his *Pupil*; while *Obadiab* professed himself a Protestant.

' My Assistance, says *Obadiab*, to the present State *against Right* is required, when
' the Sword they have unjustly acquired,
' and for which I obey them, is by a new War, a wresting again out
' of their hands: And then at such a time, in requiring my Aid,
' they require in some Sence also, my Protection, and bestowing
' on them my Power, instead of being restrained by theirs: And
' my hindring a Right, when it is in my Power to suffer it to prevail; which by no means may be given by me: For now their
' Government being dissolved into a State of War; as their Power
' upon which they established their Dominion over me is diminished;
' so is my Obligation, and my Assistance naturally returneth to him
' who hath more Right.

M. S. Pentis Authorum:

4. The *Dean* allows Men to swear, that they will live quietly and peaceably under such a Government.

Page 17.

Where he does not seem in the least to think the Swearers obliged to defend the Government against *Strangers* and *Enemies*, which the Common Law Oath required of all Men; and which is not required by the New Oath, if it leaves a Latitude for Men to swear to their *Majesties* only as *Possessors* of the Throne.

5. Whatever the *Dean* may hold in relation to the Defence of the Kingdom, against other *Enemies*; if the *Dispossessed Prince* be the Enemy, he is so far from allowing it lawful to *Defend* the Kingdom against him; that he too broadly insinuates, That he may send Commissions, which shall oblige his Subjects to serve him, against the King in possession; or at least, which a man may lawfully act by.

(a) *Cast of Alleg.* p. 31.
But a Prince may raise an Army for his Defence, besides the Militia of the Country. This he may do when he is out of possession; and loyal Subjects ought cheerfully to serve him in it. Now here is a Question which I am not

Lawyer enough to decide, Whether a Commission granted by a King out of Possession, be a Legal Commission? But be that how it will, I am sure there is no Law which requires all Subjects to receive Commissions from the King, tho he be in Possession.

6. He says, *We must pay Taxes to the Possessors* : But if these are to be paid with a tender regard to the suppos'd Right of the *Dispossessed Prince* ; and we are so far from being obliged by our Oaths to defend the present King and Kingdom against him, that it may be a Question, whether we may not be obliged to defend him against the Possessor ; it is an easie thing for men who come with these Notions into Places of Trust in the Government, to turn their Taxes into Supplies for the King, whom they think themselves obliged to serve as far as they can, without their apparent Ruine.

If therefore the Dean of *St. Pauls* is of any Authority upon this Question, there can be little or no Security to the Government by the present Oath ; which, as this *Gentleman* himself contends, promises no other *Faith* and *Allegiance*, than what is due to *Possessors* of the Throne, upon the Account of *Possession* only.

And whereas Dean *Sherlock* contends, that Usurpers are the (a) *Higher Powers* ordained by God ; and that such a sort of Subjection, or degree of Submission, as he teaches, is due to them, upon the Penalty in the 13th of *St. Paul* to the *Romans* ;

(b) *Dr. Whitby*. *Vide* the first part of his Protestant Reconciler ; afterwards recanted.

(c) Considerations for taking the Oath. *Præf.* I do by no means condemn those Writings, which plead for taking the Imposed Oath, upon such Grounds as do more fully justify the Title of our present Governours.

Another Man of great Name in the Church, who has written some things (b) admirably well, and seems (c) almost to come up to the Legality of the present Settlement ; has found out a way of making a meer Bugbear of the Sentence of *St. Paul*, against such as resist the Authority of their *Majesties*, if their Possession is not *Legal* in the Church Sence.

(d) ' The Word, says he, which we translate *Damnation*, in the Original is *ἡ κρίσις*, that is, *Judgment* : Now by our Law Treason may be committed against a King *de facto*, and that is punishable by the *Judgment* of Death, &c. It may be *Judgment* to resist the King *de facto*, in favour of the King *de jure* ; that is, it may be an Offence, which by the Law will render me obnoxious to *Judgment*, &c.

That is as much as to say, If I fight for the King *de jure*, the King *de facto*, if he prevail, may hang me by the Law of the Land ; tho' I did no more than my Duty by God's Law : For by that I am obliged in case of a Competition to serve him, whom it is eternal *Damnation* to resist.

I shall touch upon but one more Spiritual Interpreter, and that is the nameless Rector of P.

Reasons why the Rector of P. took the Oath.

This profound Casuist holds, That the Oath of Allegiance to the late King is still in force, and obliges every body to their Power, notwithstanding the taking the Oath to their *Majesties*. To help out which, he, instead of the Word [*attempts*] in the old Oath, against which Men were obliged to defend the last King, while he continued King, uses the Word [*Contempts*.]

As to the Word *Allegiance* in the Statute 3 Jac. 1. he uses several Arguments to prove, that it doth not imply actual Defence.

1. The Judgment of J. 1. in his Apology for the Oath, that no more was intended by it, than bare Obedience; and that, as he says in another place, *no more than Passive*.

Page 7.

Page 13.

2. The Naturalization of Foreigners; when yet, he says, of necessity they must be the natural Subjects of some other Sovereign Prince or State.

3. That if Allegiance required the bearing Arms, it would be a capital Crime not to accept a Commission.

4. That Non-resistance is all the Duty taught by the Church of England.

5. That the Oath of Allegiance, Enacted 3 Jac. 1. did not by any Clause of Repeal, abrogate or annul the Statutes and Common-Law, which allowed to the Clergy Exemptions from bearing Arms.

Page 8, 9.

This premised, he declares it his firm Opinion, that the Imposers of the Second Oath expected nothing that was inconsistent with the former.

Page 12.

1. Because, says he, *most of them lay under the same Obligation to it that we do*. Taking it for granted, that they lay under the same Obligation which the Rector thought he did; and that they were as sensible of the Obligation

Page 13.

2. 'There are, says he, some Presumptions, that in this Second Oath they might rather design something less. The Presumption which he mentions is from the use of *Abdication*, to express the occasion of the New Oath.

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Page 15.

3. ' Let it, says he, be remembred, how many material Passages are left out of the Oath : As the *Recognition* of his just and undoubted Right ; with which Allegiance seems to have a near Alliance : And as the Cause is manifest why that should not be continued ; so is it palpable, that this Abstract, these few Words which they have selected, cannot have all the Force and Effect of the whole.

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4. He urges the Account which the *modish Commentators*, as he calls them, have given of Allegiance, viz. that *Allegiance is no more than Obedience to a King, while he rules according to Law.*

He seems to yield the Objection, that this reduces the Oath to an empty Nothing. To which all that he says in effect, is, 'tis as much as the matter will bear.

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Which being the avow'd and direct Consequence of holding, that the Oath is taken to *their Majesties* only as to *Possessors* of the Throne : The Inference is obvious, that when such like Evasions are found out, and spread ; whereby Men think that they may swear *Allegiance to their Majesties*, and yet retain *Allegiance to the late King*, as the only *rightful King* ; it is necessary by a new Law to stop the Contagion. And since Men are so artful in their Interpretations ; to obviate all manner of Subterfuges, by obliging them, not only to recognize the *Right* of their *present Majesties*, but to *abjure the pretended Right* of the *late King* ; which it is more than a *perhaps*, that they think no general Words can reach : For let it be supposed, as this Author doth all along, that their Majesties are but bare Possessors of the Throne, without Legal Right ; and then we may soon see what his *Skill* will signify, to cast a Blind ; as if notwithstanding that Belief, a man is to be relied upon for the Allegiance which he swears to their Majesties.

Page 25. I am now in the second place, to shew you according to my Skill, &c.

It is very obvious, that when he is upon doing real Service to his Friends, he may be allowed to blacken the *Swearers* with mental Reservations, and to carry the meaning of this present Oath further than they will allow it to go ; that he may prevent their being *chain'd* to an *Obedience* they never intended, or cashier'd for not swearing to what they would be thought to intend.

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He would seem to hold, that whoever has taken the present Oath, and yet actually Page 28.

serves and corresponds with their Majesties Enemies, would make no bones of taking and breaking an Oath of Abjuration.

Yet I doubt not but if this should be his own Case, or the Case of any near Relation, he would plead Church-Authority for this; and would have more Excuses for it than one: As,

1. That he did not correspond, while he could presume of his Rightful Prince's Consent, that he should submit to their *present Majesties*; but now he does it by the greater Authority. Or,

2. He did not correspond till the Affairs of France and the late King were so flourishing, that what he before thought a thorough Settlement, became unsettled; and so the ground of the Oath failed. And thus Dean Sherlock's Notion of Degrees of Settlement falls within another of Bishop Sanderson's implied Reservations; *rebus sic stantibus*, matters standing as they were when he swore.

3. Tho' not to hold Correspondence with their Majesties Enemies seems implied, in being true and faithful to them: Yet this they must intend with an Exception of the late King, because they hold, that he has right to make War, in order to which he will want Intelligence from Men entrusted by *their Majesties*. The having this, therefore, is one of the *Rights of the Superiour*, which they must suppose excepted in the nature of the thing; tho' not mentioned.

4. They cannot think their *Rightful King* included within the general Word Enemies.

This answers what he pretends to hold of the Obligation to Defence; tho' without the Consent of *High Church*, which holds, That *Passive Obedience*, or *Non-resistance*, is as much as can, or ought to be required by the Sovereign Power.

Vide Dean S's Case of Resistance, and the Rector of P.

If therefore *Non-resistance* is all that the Legislative Power can require; an Oath to defend the Government with Lives and Fortunes, would, in the Judgment of Bishop Sanderson, be an Oath in a *Secondary Sense* unlawful, as being a Promise of what cannot modestly be required.

Vide Sand. Prel. 3. Sect. 9. De re ex se illicita secundario 6. Sect. 14. Subintelligi semper oportere hanc conditionem si ne id volueris

vis quod ex equi boni jure ab illo expectari, a nobis honeste concedi fas est.

However, if it imported *Defence* against the *late King*, all these Casuists would have said, it cannot *honestly* be granted; and is void to all intents and purposes.

This shews the Fallaciousness of that Instance, by which he would illustrate the supposed *Security* in the present Oath of Allegiance, without a Declaration of Right.

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'If, says he, a man oblige himself by Oath to pay another an hundred Pound, he is as strongly obliged to pay it him by vertue of his Oath, as if he had truly borrow'd it in time past of him. The Oath has given the other a Right to the Money; and by the Oath the Promiser is obliged to pay it.

Where to make the Parallel hold:

1. The present Oath of *Allegiance* must be as expressive of the Duty of the Subject, as the Common-Law Oath, which was *Declarative of Right*.

2. Tho' no Right is declared; he who swears must believe that no other Person has Right. For if he does, this is not like promising to pay money, which is ones own to dispose of.

3. His very Instance is not universally true: For tho' a Man swear to pay money to an *Highway-man*, the *Highway-man* has no

(a) *Grot. de jure Belli & Pacis. Lib. 2. Sect. 14.*

Right to this money. *Cicero* held the Oath absolutely void; but *Grotius* and *Bishop Sanderson*, who oppose him in this, are express, that the *Highway-man* acquires no Right. And agreeably to them (b) *Dr. Hammond* holds, that he who swore may bring an Action for the money.

(b) *Vide a late Paper of Dr. Hammond's Opinion.*

Case of Alleg. p. 34. Sovereign Power is God's Authority, tho' Princes may be advanced to it by no honest means than Thieves take a Purse.

They who shall observe the Character *Dean Sherlock* gives of his *Providential King*, will think my Instance, of swearing to pay money to an *Highway-man*, not improperly applied to an Allegiance unwillingly sworn to, while men look upon themselves under a Force, no way alterative of the *Legal*

Right of the Dispossessed Prince.

II. That in the nature of the thing, no man who holds *their Majesties* to have a Possession, contrary to Right, remaining in *King James*, can give reasonable *Security of Fidelity* to *their Majesties*; especially that the present Form of Words pronounced by them yields none, may very easily appear from the nature of the thing: For,

1. No man can be of the Opinion that they are only *King* and *Queen in fact*, but upon those Grounds which carry some of our *High Church men* to swear *Allegiance to their Majesties*, barely as Possessors of the Throne, and others of them not to Swear: but according to the Opinion of both Divisions of that Party, they cannot be obliged to do any thing in the Service of *their Majesties*, to the real Prejudice of their King of Right: Or if they have, they are bound to repent of it.

2. Tho' some Persons of Art and Abilities to delude, may have permission to take the Oaths to *their Majesties*; it is not to be presumed that the *late King* would consent that these Oaths should be generally taken, lest People who understand not Subtilties should think themselves obliged, by vertue of that Consent, to serve their *Majesties*, according to the true import of the Oath. And indeed the late King's Declarations take off all Colour from such Presumption: So that the *Non-swearers* have a great Advantage in the Argument against the other *de facto*-men.

3. Tho' Dean *Sherlock* in some places holds the *rightful King* out of Possession not to be King, and ridicules Bishop *Sanderfon's* Notion of his presumed Consent, for a sort of submission to the Rival; yet he manifestly allows, at least does not deny, such an Authority to remain in the *dispossessed Prince*, as he could not have otherwise than as King. For he not only affirms, that he has Right to make War, which he must not by his Principles yield to any Subject; but makes his Person irresistible, and strongly intimates his Opinion of the Legality of his Commissions, especially when his Power is formidable. If therefore any Authority remain in the Dispossessed King, either two *Rival Kings* may be invested with Regal Authority, which he absolutely denies: Or else, if there be any Authority in the Commands of the King *de facto*, it must lie in the presumed Consent of the other.

Case of Alleg. pag. 14.

4. He must yield this at least, in one Case of a *Prince's* being kept from the possession of his Right; which is, when an Usurper steps into the Throne before the Prince, who, according to Men of that Notion, is King before Possession, could assume the Ensigns of Royalty, which, according to them, was the Case of *Robert*, the Eldest Son of *W. 1.* upon the Possession of *W. 2.* and *H. 1.* Of *Maud* upon the Possession of *Stephen*: Of *Prince Arthur* upon the Possession of *King John*, and so downwards.

This

This in direct Consequence would extend to the present Case, when, according to him, a King *de facto* has, contrary to the Laws of this Realm, dispossessed a King *de jure*, who, suitably to the

Page 49.

Dean's Expressions, tho' he *left the Crown and Kingdom in a fright*, is not to be thought to have renounced all *future Right and Claim to it*.

Since, therefore, he is so far from giving colour to this Presumption, that he publicly claims the Crown, and commands all the Subjects of this Monarchy to assist him against their *present Majesties*; they who believe him to be King, and yet would swear *Allegiance to their Majesties*; in whatever Form of Words they swear, as they believe the Regal Authority to be legally and rightfully vested in the late King only, must be supposed to intend to do nothing in pursuance of that Oath, beyond what they can have *King James's Authority* for.

Nor must the Dean think to evade this Consequence, when all that he retracts of his *Case of Resistance*, is his former Assertion, that when St. Paul says, *All Power is of God*, he means only *Legal Powers*. But that, in an *Hereditary Monarchy*, where the right Heir is living, *Usurped Powers*, are not of God.

I am sure he no where retracts another as positive Assertion, That
the Sovereign Power which makes Repeals, and dispenses with Laws, is inseparable from the Person of the Prince.
Case of Resistance, pag. 199. & 200.

According to which, 1. The late King could do no Act which amounted to the Breach of the Contract; and so bare *Abdication*, or *running away in a fright*, is all the Foundation which would remain for the present Settlement.

2. This *inseparable Sovereignty* continuing in the Person of their *Rightful Prince*, their Majesties must upon this Principle act under the late King's Authority, or without any at all.

3. This shews, beyond Contradiction, that they who would refuse to Recognize the *Right* of their *present Majesties*, and to *Abjure* the late Kings Pretension, are to be accounted Enemies to this Government, notwithstanding all that our *Considerer* offers to clear them.

Page 28. & 29.

* A new Oath, he says, will only affect
 * such as have taken the Oath of Allegiance,
 * *bona fide*, and kept it very honestly. And is
 * it likely, that they who have done so, should be Enemies to the
 * Government?

Now

Now this will not concern our present Question ; unless these are Men who would refuse to take an Oath of *Recognition* and *Abjuration*, by reason of the Belief that *King James* remains the *rightful King*.

If therefore that Belief carries with it as great a Reflection upon the present Government as its greatest Enemies can invent ; and if farther, it disables them from serving the Government, and paying that *Allegiance* which is due to it : They (upon the known Rule, when the Exigences of Affairs require Assistance and *Defence*) as they are not for the *Government*, must be reputed against it.

I may add, as another Rule, that whoever denies to pay their Majesties that Allegiance, which the Constitution of this Monarchy requires to be paid to the *Sovereign Lord and Lady for the time being*, must be *Enemies* in the Eye of the Law ; unless, being Subjects, they are rather to be accounted Traitors. But no Man who swears Allegiance to them, while he believes the late King to be the *Rightful King*, can pay them the Allegiance due to them by the Constitution ; that requiring Allegiance, upon the Account of a *presumed Right* in the *Possessor*.

But that which puts this matter beyond all Question, is, that every Man is to be supposed to act according to his Principles ; but no Man can be led by any Principle to believe the *late King* to have the Right, who will not by the same Principle be obliged to do him Service ; that is, pay him Allegiance whenever it is in his Power : Tho' sometimes, as Bishop *Sanderson* has it, the *Exercise of Allegiance* may be *suspended* by reason of a prevailing Force.

How far soever these men may justify their Swearing to their *present Majesties*, *bona fide*, according to the persuasion of their own minds, they cannot be said honestly to have kept the Oath : For if they have kept the Oath, they have acted contrary to their Belief : If they have acted according to their Belief, they have not kept the Oath.

Oh ! but says our *Considerer*, ' The Legislative Power imposed the Oath of Allegiance on the Subject, and intended it for the Security and Establishment of the Present Government : The Subject takes the Oath, and keeps it faithfully ; how is he then an Enemy ?

Page 29.

If he who believes *King James* to have the Right, tho' the Parliament declared the Regal Power to be *rightfully* vested in their present Majesties, can be thought to have taken the Oath in that Sense in which the Parliament intended it for a Security, this were something

thing : And yet, if the Parliament might at that time think there was no need of having the Oath as express as the Act of Settlement, or implying as much, and should afterwards find a necessity of providing against a spreading Evil, of which they were not then so sensible ; they who have manifested their Opposition to the Grounds of the Settlement, if they should refuse to give that reasonable Security, would be no less Enemies, for having before given what they cannot be thought ever to have intended for a real Security.

Since he thinks himself very lucky in his Similies, I must not pass by that which he brings upon this occasion.

My Friend, says he, desires me to walk a Mile with him, to conduct him through such a thieving Lane, and I consent ; and when he comes to the Miles end, his Fears grow greater, and he desires me to walk another Mile ; but I tell him, It is late, and I can go no further without Inconveniency, and Danger to my self ; and for this he quarrels with me, and accounts me his Enemy. I leave you to judge with what reason.

Apply but his own Instance to the present Case, and the Reason will appear undeniable : For,

1. He admits the Case to be of two Persons, whose Ways and Interests are divided ; that is, one for King *James*, while the other is for their *present Majesties*.

2. He supposes that the *Jacobite* went with the *Williamite* as far as he could, with his own *Conveniency*, and without *Danger*.

3. That there is yet more Danger. This Danger he must not, by his Principles, share with the other, especially when it is so late, that the utmost time which has been allowed to keep along with the *Williamite* is expired.

4. It is therefore natural to conclude, that this Man is one of that Party from whence the farther Danger is to be feared.

5. And upon that Account the *Williamite* ought in the first place to secure this Man from doing him any Mischief ; by his Oath, as full as Words can make it, if he is a Man thought to make Conscience of an Oath ; if not, by disabling him from adding to the Danger.

6. To apply this Instance to the present Case.

If a Man slightly Arm'd, travelling upon a dangerous Road, should meet with several Passengers who had been rob'd, and made such a Description of the Thieves, that upon the first approach of some Men well mounted, every one of the Fellow-Travellers should be satisfied that they were part of the Gang who committed the Robberies :

Robberies : And yet, tho' the Travellers were superiour in Number and Courage, they should be so generous as to trust the others with their Arms, upon an Oath, that they would never set upon them till they were joyn'd by the rest of their Party ; Would not this argue a strange sort of Generosity in them, who should take such a slight Security ?

It must not be said that this is not the present Case, in relation to the Oath of Allegiance ; since these men profess, that they intended to pay no other *Allegiance*, than what is due to a King barely as *Possessor*. Nor can the Import of the Word *Allegiance* ever convince them who are resolved never to own, that *Allegiance*, according to the Constitution, implies an acknowledgment of the *Right* of the *Possessor*, and a Renunciation of all Pretenders ; as it engages the Subject in the *Defence* of their Prince against all men whatsoever.

VI. But whoever will take an Oath in such a Form, as leaves no colour for evading the Common Law-meaning of the Oath of Fidelity, ought to be accounted a Friend till the contrary appear : For,

I. It is a common Presumption, that Men will not *wittingly, and willingly, and with an evil mind*, forswear themselves. Case, p. 28.

Tho' this Gentleman, to serve his purpose, takes a Liberty with his Friends ; it is by no means to be supposed, that any Man who should in express Terms swear to the Right of *their Majesties* ; that he believes the *former King* to have no Right ; and that he will to the utmost of his Power defend the Persons and Right of *their Majesties* against him ; should, notwithstanding this Oath, believe that *their Majesties* have no Right, but that the Right is in the *late King*, and that it were unlawful to defend *their Majesties* against him.

1. It is certain, the Consent of the *late King* to such an Oath is not to be presumed.

2. If it were actually given, the Oath could not but be thought to bind, according to the plain meaning of the Words : God being called as a Witness and Party to a Renunciation of that very Exception, or Equivocation, with which, otherwise, Men would think to juggle.

3. The Question being of *Protestants* who take this Oath ; the Doctrine of mental Reservations, or the Dispensation of any other *Superiour*, besides them who enacted the Oath, cannot be thought to take place here.

II. Tho' I will admit, that there are Exceptions to be made to the general Rule and Presumption in this Case; because those *Gentlemen*, who pretend to be the only Men fit for Employments, must not be thought so weak, as not to see through all the Evasions which *Clergy-men*, or others, have found out to elude the meaning of the present Oath; and therefore it must be yielded, that they break it *wittingly and willingly*: Yet the Rule holds good in the General; because most Men are to be presumed to have regard to their Oaths, when there can be no doubt of the meaning. Nay, even those Men who cannot but know, that they break the Oath which they have taken to *their Majesties*, would not be likely to break a plain Oath of Abjuration: For,

1. Tho' their Bias may lean to those Interpretations of the present Oath, which stifle their Convictions; no Evasion for such an Oath having yet been invented, their Consciences would so stare them in their Faces upon the apparent Violations of so solemn a Tie, that it is not to be thought they durst venture.

2. Men who would venture Damnation to perjure themselves, would not do it in such a manner, that the World must pronounce them wilfully perjured. As Sir *John Denham* well observes,

Vide his admirable Poem on Cooper's Hill.

*Who fears not to do ill, yet fears the name;
And free from Conscience, is a Slave to Fame.*

3. The Temptations for breaking such an Oath would be removed: For,

(1.) Neither could the *late King* trust 'em after such an Oath against him; nor if he did, could they have any Reputation or Party wherewith to serve him to any purpose, or render themselves worth courting.

No Man, whatever his Talents may be, can be a great Man as he stands alone.

They who swear to *their Majesties* as King and Queen in fact, have hitherto maintained their Reputations with a bigotted Party, upon that Doctrine of Probability before observ'd, which makes the Evasions, with which the present Oath is taken, to pass for the Church-fence. But since there can be no Protestant Church-Cover for bare-faced Perjury; they who should take a full Oath of *Recognition and Abjuration*, and yet act as if they believed the *late King* still to have the Right, must no longer pretend to be *Protestants*; and by being necessita-

necessitated to pull off that Mask, under which they have served Popery, will become useless, and despicable.

(2.) As such an Oath as is proposed would be an effectual Renunciation of *King James* and his *Party*; Interest, which has so long had the Ascendant over these Men, would be an Argument for every one, who should take such an Oath, to strengthen and support himself among them, who receive him upon this Test.

(3.) Tho' the Supposition, That the *late King* still remains *King*, or has Right to be *King*, has no real Foundation in Law, Reason, or the Authentick Doctrine of the *Church of England*: Yet some Men are for maintaining, that he still has the Right, meerly because they have held so hitherto. But as in abjuring the supposed Right, they would own themselves to have been in an Error; Since they could not have the Glory of Perseverance, they would, in all probability, be driven to the Honesty of Repentance.

V. But it will be said, What need would there be of an Oath of Abjuration, if there should be an Oath recognizing the Right of *their present Majesties*? Would not this sufficiently imply, that the *late King* has no Right?

Ans^r. 1. If it does, then, certainly, whoever would proffer to take an Oath of Recognition, and yet refuse an Oath of Abjuration, would make the last necessary by his Refusal; as it would argue that he has some hidden Reason for his Refusal; and therefore did not mean honestly when he proffer'd the other.

2. The Refusal of an Oath of Abjuration must be presumed to be grounded upon a Perswasion, that the *late King* has Right: And therefore, whether this is really consistent with the Belief, That *their Majesties* have Right, or no, is not very material. However,

3. It is plain that these Men may, by their avowed Principles, take an Oath to their *present Majesties*, as having a *Legal Right*; and that they will defend them against all Men; and yet not think themselves obliged to defend them against him whom they suppose to have the Divine Right; unless they swear against him by Name: For,

1. According to them, the Sovereignty, and all the Rights of it, remain inseparable from his Person; especially such as Kings may retain, when they are not in a Condition to require the Actual Obedience of their Subjects: and by plain consequence, the Prerogative of not being included in the general Words of any Statute: And therefore a Defence against all Men, would, with the *de facto*-men, imply an Exception of their dispossessed rightful Prince.

2. These Men to some purposes allow *their Majesties* to be *lawful* and *rightful King* and *Queen*; and yet not in such a sense as wholly excludes the *late King's* Pretensions, as I might prove by several Instances; but shall confine my self to Dean Sherlock, and the more wary Author of an *Enquiry into the Nature and Obligation of Legal Rights*.

Tho' the Dean seems very full, that *their Majesties* have no *Legal Right*; that the Settlement to which he contends that a sort of Allegiance is due, is *actual*, not *legal*; and that, according to the Doctrine of the Convocation, in the time

of *J. I.* Those Princes who have no *Legal Right*, may have *God's Authority*. Yet it were no difficult thing to prove, by the direct Consequences of what he holds, if not by the express Terms, that he must needs be ready to swear, that *their Majesties* are *lawful* and *rightful King* and *Queen*; and yet would not think *King James's* Right altered by that Providence, which settled *their Majesties* in the Throne; or that he ought to defend *their Majesties* against *King James*.

In his Vindication, where he seems to advance farther towards the Right of this Government, then he had in his (a) *Case of Allegiance*, he says, 'He

(b) *Case of Allegiance*, pag. 9. The Submission of the Prince, indeed, may be thought necessary to transfer a *Legal Right*.

(c) *Vindic. pag. 18.*

'is the *King*, who is in Possession of the Throne, with the (b) *Consent and Submission of the People*. The *Consent and Submission of the People* turn that which was originally no more but *Force*, into a *Civil and Legal Authority*, by giving themselves up to the Government of the Prince: That (c) all Mankind have this *Natural Right*; 'That their Submission gives a Prince a *Right to govern them*; and 'that this is a *Lawful Right*.

Any Man therefore, one would think, might maintain from these Premises, that he who has a *Legal Right* to Govern, is the sole *Rightful Prince*, and is to be defended against all others.

Ibid.

'No hold you there, says the Dean, tho' the People confer a *Lawful Right*, they can't extinguish their former *King's Claim*, who has not submitted.

Well, but may not the King in Possession be secured of the Allegiance of those, who acknowledge him to have Right, and swear that they will be true and faithful to him?

Truly,

Truly, the *Dean* intimates broadly enough out of *Dr. Jackson*,
 ' That though Subjects would resist God's Or-
 ' dinance; if they should resist till their Ma-
 ' jesties be declared *Usurpers* or *Intruders*, by
 ' *some higher Power or Authority*; the late King,
 ' like *H. 7.* against *R. 3.* is *Authorized by God's*
 ' *Ordinance to execute Vengeance, or to bring Con-*
 ' *demnation on their Majesties: which every*
 ' *one might not have done, which perhaps no other*
 ' *might do, save only in his Right and Interest, and by his Com-*
 ' *mission.*

Page 77.

Case of Alleg. pag. 31.

Ibid. This Tyrant.

Upon which the *Dean* himself says, ' Now
 ' who ever doubted but a Rightful Prince,
 ' when dispossessed unjustly, may recover his
 ' Throne again if he can, and dispossess the Usurper; or that those
 ' who lawfully receive Commissions from him, may lawfully fight in
 ' his Quarrel? But the great Question still remains, Whether Sub-
 ' jects may lawfully take Commissions from the dispossessed Prince,
 ' to fight against the Prince who is settled in the Possession of the
 ' Throne?

Vindic. pag. 77.

Since when he had taken the utmost time to consider of this Point of Law, he would not determine against the Legality of such a Commission, all the Implications in his First Book, of his Opinion for the Legality of them, remain.

And it must be remembred, that he had there asserted positively, That *Loyal Subjects*
 ought cheerfully to serve their Prince in an Ar-
 my, which he may raise for his Defence when he is out of Possession. And then I think it can be no great Question, whether they ought not to act under his Commission, when required by him.

Case of Allegiance.

Besides, as the *Dispossessed Prince* still, according to him, must continue the *Rightful Prince*, his unrecanted Do-
 ctine of the *Absolute Irresistibility* of his Per-
 son remains in full Force. Wherefore we may conclude, that *Dean Sberlock*, tho' he should think his being a
 Clergy-man were no Exemption from the Defence of their Majesties, and the Kingdom; yet would not by vertue of an Oath, recognizing the Right of their Majesties, think himself obliged to defend them against King *James*. And yet I dare say, no man thinks so hardly of the *Dean*; for my part, I profess I do not, as to believe, that if he sware to defend their Majesties against King *James*, he would not, upon occasion, pursue the Obligation of that Oath.

Vide Case of Resistance.

Yet

Yet our *Considerer* must say, suitably to his licensed Freedom, that
 Page 28. *Dean Sherlock would make no Bones of taking and breaking an Oath of Abjuration.*

2. The Author of the Enquiry having, without doubt, observed with what Contradictions *Dean Sherlock* had been charged, both by Friends and Enemies to the Government; and the Censure those had incurred, who finding no other Tory Principle but *Conquest* left for the Foundation of this Settlement, had placed it upon that; touches upon it very tenderly; and, if we except what he says that way, it must be said, that he fixes the Foundation of this Government

Vide Dr. S. supra.

(a) Enquiry into the Nature and Obligation of Legal Rights, &c. p. 17. A Legal Title to the Crown, and a Legal Authority, may be separated; that he who has the Title, may not have the Legal Authority, nor be the Legal King.

(b) Page 7.

(c) Page 11.

(d) Page 7.

wholly upon an *Abdication*, or running away in a Fright; and the Judgment of the States upon this *Abdication*, which he supposes to have given their *Majesties* a (a) Legal Authority to administer the Government, while he admits that the late King has a Legal Title, separate from that Authority: But this Authority of the States he limits to a (b) *Vacancy*; or, as he explains himself, where (c) *there is no Monarch actually in the Throne*: and the Power of Judging or Declaring, he allows not to go farther than for the (d) *next Heir*. He says farther, in a particular Case, by way of a General Rule, *That where the undoubted Heirs to the Crown, by a Lineal Succession, are unjustly kept from their Right, Subjects are bound to do them right, by placing them on the Throne.* So that,

1. Suppose the Prince of *Wales* were wholly out of Question; yet if his Majesty has his Crown otherwise than in the Right of *her Majesty*, he would not be a Legal King in this Author's Sence, notwithstanding all that he says to make us believe, that he thinks *his Majesties* Authority Legal.

2. If the late King still retains a Right; whatever Legal Authority *their Majesties* may have, the People, according to him, are bound to do King *James* right, by placing him upon the Throne. And what he says of their having answered the Law of Succession, in placing him formerly upon the Throne, is a meer Evasion; it not coming up to what is due to a continuing Right, whether of Succession before Possession, or of Restitution afterwards: And, certainly, it is Nonsense to suppose, that I am obliged to put a Prince into Possession,

Page 7.

Possession, if an Usurper got in before him ; but not if the Usurper came in upon the dispossessing him.

As he supposes the Throne to have been no otherwise vacant, than by an *Abdication* ; this will plainly resolve its self into Dean Sherlock's Notion of *Degrees of Settlement*, according as the *Abdicating Prince* is more or less formidable, or intent upon pursuing his supposed Right. And thus he who is thought to have divested himself of his Sovereignty, when he left the Nation, without constituting any body to govern in his Absence ; may be said to have reassumed his Royal Dignity, by granting Commissions to a standing *Council*, or to any particular Persons to manage his Interest. Which is the direct Consequence of dividing the Breach of the Contract from the *Abdication* : For if no regard be had to the breach of that, 7. 2. would continue as Legal a King as C. 2. was, during the late Usurpation.

And whatever Allegiance the *de facto*-men shou'd swear to *their Majesties*, and intend to pay while the Strength of the Nation were in other Hands ; it is little less than Demonstration, that unless they swear *their Majesties* have the Right exclusive of King *James* ; the present Government cannot be secured of their Allegiance : because by their Principles, if they get into Power to turn the Scales, they are obliged to recall *their King*.

This, I conceive, may be enough to shew the absolute Necessity of an Oath, whereby Men may not only recognize the Right of *their present Majesties*, but abjure the pretended Right, or Title, of the *late King* ; which no man can do, while he, with that subtil'e Author whom I last cited, separates the *Legal Authority* from a *Legal Title*.

6. That they who take the present Oath to their Majesties, while they suppose the Right to be in the *late King*, are guilty of material Perjury, would be no Question to any body, who does not take Bishop *Sunderfon*, and other Casuists of that Stamp, for Oracles.

The Bishop all along supposes, that Allegiance was due to C. 2. during the late Times of Usurpation ; and yet, that men might promise to be *true and faithful* to the then Powers, without entring into any Obligation, (a) contra-
ry to their Allegiance to C. 2.

(a) Case of the Engagement, p. 102.

His chief Reasons are,

1. The (b) Absence of Words incapable of a Construction binding to less than the Allegiance due to Governours *de Jure*.

(b) Page 110.

2. That

2. ' That the Imposers intending by the Engagement to secure themselves, especially, against the Designs and Attempts of those men, who they knew well enough, held them for no other than Usurpers ; must be in Reason supposed to require no more Assurance of them by the Engagement, than such as may, and is usually given to Usurpers : Which, says he, is not an Acknowledgment of their Title, and a Promise of Allegiance, but merely a Promise of living quietly so long as they are under their Power, and enjoy their Protection. Whereas,

(1.) Tho' he will not allow any Promise of Allegiance to be contained in the Engagement ; there was not only a Promise to be true and faithful to the Commonwealth ; but as then established, without King and Lords : Which was an exprefs owning it for an established Government. And himself had before laid it down as a Rule,

that (a) Allegiance is a Duty, which every Subject, under what Form of Government soever, by the Law of Nature, oweth to his

Country ; and consequently, to the Sovereign Power thereof. So that here must have been an Established Government without a Sovereign Power, which is absurd ; or else they who took the Engagement with an honest Mind, could not but think that their Allegiance was transferred to Persons invested with Sovereign Power.

(2.) He very absurdly supposes, that because Governments, esteemed Usurpations by their Enemies, seek to secure themselves ; therefore they seek to be secured only as Usurpers : that is, not believing that they are *de jure*, and that the Allegiance of the Subject is due to them, because their Enemies deny they have any Right. Or else, that to oblige the Subjects to defend the Persons of the Governours, is a necessary Security for *Rightful Governours* ; but unnecessary for Usurpers : which is equally absurd.

But admit the *Bishops* Evasions would hold for the Engagement ; it is evident, that there is no true ground for them in the present

Oath of Allegiance : For he takes it for a clear Truth, ' That all Promises and Assurances, wherein Faith is required to be

given to another, ought to be understood *ad mentem imponentis*, ' according to the mind and meaning of him to whom the Faith is to be given ; so far forth, as the meaning may reasonably appear by the nature of the matter about which it is conversant ; and such signification of the Words whereby it is expressed ; as, according to the ordinary Use of Speech amongst Men, agreeth best thereunto.

And

And tho' he allow the Promiser of Faith in some cases to take advantage of *Ambiguity* in the Words of the Promise, and to make use of that *Latitude of Sense* which was left undetermined: Yet he does not permit Men to advantage themselves of any *re-mete, secret, and reserved intent*.

Page 99.

But our *Law-makers* have been so far from giving occasion to suppose, that they had an hidden Intent to have this Government sworn to, only as an *Usurpation*; That,

1. They acknowledge *their Majesties* to be *rightfully invested* with the Regal Dignity, and declare their Submission to them upon the Account of Right: Which Submission being not only for themselves, but as the *Representatives* of all *England* not personally present; the Subjects that swear to be true and faithful to *their Majesties*, cannot be thought to answer the meaning of their Oath, if they pay not the Faith due to *rightful Possessors*.

2. They faithfully promise to *defend* the Persons of their *present Majesties*, and the Limitations set by that Act, which requires the Oath, *against* all Men whatsoever.

3. They use such a Word to engage the Subjects to the Service of *their Majesties*, as in common and legal Intendment, and by Bishop *Sanderfon's* own Confession, implies Subjection to a Rightful Government. Every Man must take Allegiance to imply a Legal Tie; and the Law supposes this, to be only to a Legal and Rightful Government. Nay, the Bishop himself holds, That it is due only to the Rightful Governour; and that the exercise of it is suspended during an *Usurpation*.

Whoever therefore takes the present Oath with a Belief, That he ought to retain Allegiance to the late King; or that he is in any respect King of *England*, or ought so to be, must needs be guilty of *material Perjury*. And if he does it, after the Import of the Oath has been fairly represented, it will be very difficult to avoid *Formal Perjury*.

I will agree with Dean *Sherlock*, ' That a
' different Opinion may excuse from *formal*
' *Perjury*: For no Man is formally perjured,
' who does not know it.

Vindic. p. 80.

But then it is the Judgment of all *Casuits*, That an erroneous Conscience is sinful and damnatory, where the Error does not proceed from invincible Ignorance.

Vide Bishop *Sanderfon's*
Sermons.

The evading therefore this Snare and hazard of Damnation, by an Oath which artful Men have made of doubtful Interpretation, were one benefit of an exprefs Oath of Abjuration, which the *Considerer* seems never to have thought of.

Nor, indeed, has he said any thing material against those Arguments for one, which he has thought fit to mention ; only has given occasion for Men to take greater notice of the Advantages to the Government and Nation, which it would be likely to produce.

Fift General Head.

Page 26.

He asserts very Magisterially, That an Oath of Abjuration *will neither gain their Majesties any new Friends, nor fix the old ones faster : nor discover any old or new Enemies.*

But I think, whoever impartially considers, may soon be satisfied in the contrary to every one of these Assertions : For,

1. Since it is evident, that they who take the present Oath are really bound to the Import of an Oath of *Abjuration*, and are guilty of *material Perjury*, if they take the Oath in a lower sence ; these Men, when they are under a necessity of bethinking themselves of what they are already bound to, are likely to take the Oath in such a Sence, as will make them Friends of Enemies : Or if they were not to be accounted other than Friends before, they will by an Oath of Abjuration be fixt faster to their Duty.

But if any, who have hitherto pass'd for Friends to this Government should refuse an Oath of *Abjuration* ; it appears by what has been above observed, that this Oath would make a Discovery of Enemies, not before truly known.

2. Many Men may be thought to have held off from this Government, because they thought it at least doubtful, whether it asserted its own Right ; but would readily submit to that Authority, which should put that out of question : The chief Difficulty having been, to satisfy Men that they ought to swear Allegiance to any Government, meerly upon the account of Possession.

3. Several may have held off out of Worldly Policy, when they found so many seemingly come into the Government, tho' really against it, that they might think it in danger of over-setting by the number of Enemies within. But when these found, not only the Men in Offices, but the Generality of the Nation, engaged and united in the Defence of the Government against all Enemies whatsoever ; they would find no Temptation to be of a divided Party, or Interest.

4. Tho'

4. Tho' those Subjects who are Friends to this Government upon a Principle, cannot be fixt faster to it by an Oath of *Abjuration*; since that can oblige them to no more than they already know to be their Duty, and Practise, as they have Opportunity; yet it may be thought an occasion of fixing Friends abroad, and of gaining new ones; when the Honour of the Government is vindicated, and its Continuance and Strength secured, by an Oath, which will involve all men who should break it, in formal, as well as material Perjury.

5. But as this Gentleman's Charity will not admit of a Distinction between *Formal* and *Material* Perjury; and therefore he could not think of any Benefit which might accrew by an Oath, which would free honest Men from the Danger of the First; Neither do his Politicks reach to another Benefit of an Oath of *Abjuration*; which is the weakning Enemies, and strengthening and supporting the Government, and the Friends to it: Which cannot properly fall within the only (a) ends and purposes of an Oath, which he could think of.

(a) *Pag. 26.* An Oath of *Abjuration* will neither gain their Majesties any new Friends, nor fix the old ones faster to them;

nor yet discover any old or new Enemies. And, what is an Oath good for, that will answer to none of these ends and purposes.

The Benefits likely to arise from such an Oath might appear in many Instances; of which I shall name some:

1. Whereas, according to the Doctrine too generally received, Men may swear to the Government, without giving any Security for the Support and Defence of it; all Men who should take an Oath of *Abjuration*, would proclaim their being engaged in its Defence; to the Horror of its Enemies, and Encouragement of Friends, both at home and abroad.

2. Whether this struck Terror into Enemies or no, the engaging Numbers to stick to the Government in all Events, when before they thought themselves at liberty to choose their Side, could not but afford real Security and Strength.

3. Such an Oath would vindicate the Honour of the Government; which hath suffered most by the Reproaches of pretended Friends.

4. They who before thought themselves as much engaged as they could be by this Oath, would be enabled to serve the Government with Courage, when they saw the Nation Sworn-Brethren for the Defence of it: Whereas, before, the Fears of Treachery might weaken

weaken and dispirit too many in the Service, who might think that every Step they took, they trod upon a Mine ready to spring.

5. The Effects of an Act of *Abjuration* would be very beneficial, if it were only upon the account of Offices.

The Influence of the Offices of the Kingdom Ecclesiastical, Military, and Civil, is so very great, that the Constancy of the People of *England* to the National Interest, while all the Offices were in the Hands of that Party, who are now against the Right of *their Majesties*; as it is an Evidence, how despicable that Party must needs be without such Supports; is an undeniable Argument for taking from them that wherein lies all their Strength and Power to do Mischief.

Here the Considerer Objects :

Obj. 1. *Will they not rather be enabled to do more mischief, by being more trusted for such an Oath ?* Which admits of several Answers.

1. They cannot be more trusted than they have been, in confidence, That they had taken the Oath without any mental Reservation.

2. If they should take such an Oath; the Presumption, as I have before shewn, will be strong for their keeping it.

3. They could not, if they would, do as much mischief as they have done; because they could not have so many to joyn with them as they have hitherto misl'd, with Pretences which would serve no longer.

4. Some at least of the most dangerous, would be likely to refuse it: Either, 1. To have the Reputation of Constancy: Or, 2. Of being true Sons of the Church; according to what has pass'd for its Doctrine: Or, 3. Because they are too far engaged in Plots against this Government, to dare to desert their Party: Well remembering that of the Satyrift,

*Carus erit Velli qui Vellem tempore qua vult
Accusare potest*——

He who has Vellie's Secret has him fast.

5. Admit they should all take the Oath, and design to elude the plain meaning of it; this could not be without communicating and publishing their Evasions: So, that the Government would be sufficiently alarm'd against trusting many of them; and however, it is likely would make a Distinction between them who have served it out of Principle; and them who must renounce their Principles to come in to it.

6. As it is not to be supposed, that the Majority of those who had declared the Right to be in the *late King*, would wilfully perjure themselves to keep their Places; the Treachery of a few who had lost that Credit with which they should serve their Party, could not ballance against the advantage of having all of a piece, and united against the common Enemy; and the strengthening the hands of Friends by the places of them who should absolutely refuse to abjure the late King's Pretension; or however, should be thought not to have deserved so much for coming in at the Eleventh Hour, as they that came in at the First.

Obj. 2. But whereas to serve his purpose he had held, that all who take the present Oath, and yet retain an Allegiance to the late King, wilfully perjure themselves; that therefore all these would take an Oath of Abjuration; and that it is not *in man to find out or assign one tolerable Reason why they should not do it*; he founds his main Objection upon the Supposition, that *all that take the Oath of Allegiance will not take the Oath of Abjuration*; but a great number of good People, that serve their present Majesties with Faithfulness, Honesty and Diligence, and with Affection too, will by reason of that, be dispossessed of their Employments, and incapacitated to serve them any longer: For to be sure, no other but the honest, faithful, and the conscientious, will be dispossessed thereof.

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To which I answer,

1. As has appeared above, how good soever such Men may be; they cannot be good Subjects, but are to be accounted Enemies; because the only possible ground for their Refusal, must be the Belief, that the *late King* still retains a Right to dispossess their Majesties; and, at the least, is not to be opposed: And therefore, the more conscientious they are with that Opinion, the more dangerous they are to the present Government.

2. Since he holds, That a great number of these Men will be dispossessed, so much the greater will be the Benefit to the Publick by such an Oath, as it disarms the more Enemies, and supplies their Places with the more Friends; making Men to be useful, who had been lost to the Publick.

3. If we could suppose that these Conscientious Men are truly Faithful to the Government; and yet their Faithfulness could not over-balance the Prejudice of their Education, against the Right of them whom they serve, as having Right; the men must needs be so shallow in their Understandings, that no Government would have any loss of them.

4. If

4. If these Men were as affectionate to their present *Majesties* as our *Considerer* supposes, they should be contented to have their Places fill'd by Men, who would vindicate their Majesties from the reproachful Imputation of being Usurpers ; which the Principles of these Men fix upon them.

5. If great Numbers should be dispossessed, we must suppose, that at least the Heads of the Party would go among the rest : And then no man could be tempted to deny the Right of their Majesties as a Recommendation to Places under them ; but it would be as much a man's Interest to be for the Right, as it has been to be against it.

When therefore Interest should fall in with the universal Bent of the Nation ; what would become of that Party which has been no way considerable, but by the Artifices and Encouragement of pretended Friends ?

6. If all the *de facto*-men should be dispossessed, they who declared the Regal Dignity to be *rightfully invested* in their Majesties, and they who have from the beginning approved of that Declaration, will be enough to fill all the Offices of the Kingdom ; and to support the Government, which they so readily and thankfully submitted to, as a *Deliverance* not only from the *late King*, but from that Party which had much longer Tyraniz'd over them.

But, surely, the *Considerer* cannot but be thought something out of season in his Argument, against dispossessing them who will neither *abjure* the late King, nor Recognize the Right of their Majesties ; at a time when the Nation is so sensible, that there has been Treachery somewhere : And cannot but think it most probable, if not certain, that they who have a Sett of Principles for the purpose, should be the men that should act uniformly to them.

Indeed, it is very difficult not to think, that how much soever a *Prince's* innate Goodness and Clemency may put him upon conquering Enemies by Kindness ; that method is always dangerous, while there is any Competitor for the Crown. For if the Competition be weak, that is the most likely means of giving Strength to it : But when, by the Treachery of them who have been trusted, or any other means, the Competitor out of Possession has an inviting Prospect of Returning ; every Act of Indulgence towards his Party (which they that believe him to have the Right must be) serves as a Step towards his re-mounting the Throne.

Some of these Enemies, perhaps, hardly know themselves to be so : But if they will not come up to that Test, which the Necessities of the Publick require, for the distinguishing them from Enemies, should they be let in, the Crowd would follow.

By what I have already represented, it may appear, that the Design of procuring an Oath of Abjuration, is not to be accounted *vile and selfish*, as this Gentleman insinuates : And that it is so far from tending to the Hazard of the *Peace and Welfare* of the Kingdom, that it seems the only probable means of securing it : I had almost said must be judg'd so, by all who do not think the Restoration of their King of Right, the only means to an end, which all would be thought to aim at ; even they who would receive the *late King* with French Forces.

Page 31. & 32.

Certain it is, that many who would think it an happy day for *England*, when an Oath of Abjuration should be enacted, would be as well pleased with the Conversions, as with the Falls of the most of them, who, notwithstanding the present Oath to their Majesties, think or declare themselves at Liberty to serve the *late King* upon all occasions : Not but that they who wish well for *England*, must needs desire to see some men made as exemplary in Punishments, as they have been in Treachery, and the Profession of Principles fitted to justify them.

I think it has fully appeared, that an Oath of Abjuration is no new Project, or a *fresh Spanish Wreck* ; to which he most wittily compares it. If it were a *French Wreck*, perhaps he might lay a Claim of merit to it.

However, they are most likely to deserve the Name of *Projectors*, who pretend to secure the Government by an Oath less explicit than was ever before used, and that at a time when new Arts had made it necessary to have one, more explicate than ever ; who would find out an Invention to support a Government without defending it ; to make *Passive Obedience* supply the place of *Active* ; to make two opposite Allegiances in force at the same time ; and to carry on a War between two *Rival Kings*, without engaging the Subjects in the Quarrel, till they should see which side had the better ; and, if they must fight against either, to secure the Possessor, by fighting for the other whenever he should land, or send his Commissions.

Tho' I must allow the *Considerer* to know the Sentiments and Proceedings of the Enemies to the present Government ; I am sure we are not to take it upon his Word, That ' the

Page 30. ' Managers of the *Jacobite Party*, and more

Page 31. ' understanding People among them, do un-
' derhand abett and favour an Oath of *Abju-*
' *ration* ; well knowing they shall find their
' Account in it.

If they did promise this, still, according to himself, who is al-
ways free with his Friends ; this would be no Objection against it ;
since, as he says, *they have hitherto shewn them-*

Page 30. *selves but Puny Politicians, and have laid and*
managed their Designs with so much weakness and
simplicity, that they seem to be insatuated very much.

I am sure, if they should desire an Act of Parliament for an Oath
Abjuring their King's Pretence of Right, it would be an undoubted
Evidence of their Insatuation.

Nor can it enter into my Imagination, that any *Jacobite* should
desire this : For it must be either a *Jacobite* in Office, or a *Jacobite*
out of Office : But who can think that a *Jacobite* in Office should
desire an Oath, to turn himself out ; when he may at his Pleasure
give King *James* the same, or a greater Proof of his Loyalty, by
laying down before that Discovery of himself becomes a Forc'd-
put?

If it be one out of Office, nothing but Envy and Repining at
the Advantages which others enjoy, who deserve no better than them-
selves, could make them wish their Friends removed : And all Men
must judge, that in such case Envy would be more prevalent than
Zeal for their *King's Service* ; which one Man in a considerable
Post may promote more than Thousands elsewhere.

Oh ! but they are likely to reap Advantage from the *Distractions*
an Oath of Abjuration will undoubtedly produce among us :

So far from that, that it will prevent *Distractions* and Divisions
of Duty : For Men who take an Oath of Abjuration, will no lon-
ger be able to trim between *Right* and *Fact*, till they are almost di-
stracted to know which they should adhere to ; nor will there be
drawing of different ways among Benches of *Justices of the Peace*,
or other Officers ; of which some notable Examples might be
given.

If the *Distractions* are, by the turning men out of Offices, who
can serve *their Majesties* no otherwise than as Possessors of the Throne
without Right ; a very fair riddance of them ! But, surely, these
Passive

Passive Men, who pretend that they will live quietly under a Government, which their Consciences will not give them leave to *defend*, will not raise a Rebellion to recover their Places. And if they should, perhaps it were no undesirable effect of such an Oath : For when the Body of this Nation, which is entirely for *their Majesties*, had all the Men in Offices of their side, how easily, how happily, would such a Rebellion be quell'd ! If this were the effect of such an Oath, I am sure it would discover, or occasion, the *Distress* of the *Jacobite*, or rather French Party here ; and would in all likelyhood for ever free this Government from the Danger of Enemies, Foreign, or Domestick.

But should there be hazard in this, it were certainly better to have the Enemies declared, than lurking under the Mask of Friendship.

VI. Yet in farther Disproof of his Suggestions, I shall shew, not only that no one ought to refuse an Oath of Abjuration, if required by Act of Parliament : But that the Refusers cannot be considerable in Number or Interest.

Here I may use, 1. Some Arguments *ad hominem*. 2. Others, such as I take to be in their own nature convincing to Men capable of Conviction.

1. The *Considerer* has no reason to suppose, that any man ought to refuse an Oath of *Abjuration*, if required by Act of Parliament : For not to repeat his Concessions before observed,

(1.) He professes, that he shall think he has represented matter but confusedly, if his Friend do not see from his Collections, 'That the Oaths of Fidelity and Allegiance have been constantly imposed on, and taken by the Subjects of the Land, (concern'd to take them) to such Persons as were by the Consent and Approbation of the *Three Estates of the Kingdom* invested with the Regal Power ; although they could not lay Claim thereto by Lineal and Legal Succession.

Page 25.

I think it is no great Question, but he here admits Allegiance to be due in such case. And if Allegiance be due, there is no doubt but it is due in that Sence in which it was constantly imposed and taken ; which as I have shewn, was always as to a King of Right, and carried with it an implied Recognition, and Abjuration.

He, therefore, in owning Allegiance to be due to their Majesties, does as much as confess, that they have the Right to the Crown, and that the late King has none : Nor is it to be thought that any but a Quaker that believes this, will refuse to swear.

E

(2) He

Page 32.

(2.) He says, ' No one that in good Conscience took the Oath to *their present Majesties*, can find himself at liberty to serve by any ways or means one that would certainly *destrone them*. This is undoubtedly the least that an Oath of Allegiance can do, that it ties the Hands of all that take it from lending any manner of Aid or Assistance to the *late King James*. But if his Post be Active, he is farther obliged thereby to be Active in their Defence. If a Privy Councillor, a Bishop and a General, take the Oath of Allegiance to King *William* and Queen *Mary*, they are undoubtedly obliged thereby to advise faithfully; and keep their Secrets; to pray for their Prosperity, and fight the Battles of them.

Where,

1. His *Rightful King* is such an one, as has no Allegiance due to him. And if that which ties the Subjects to him is broken, he must confess that he is no longer their King, nor can have Right to be their King, while another has Right to their Allegiance.

2. He having expressly asserted, That no man who has sworn to *their Majesties* may aid or assist King *James*, what follows of Fighting the Battles of King *William* and Queen *Mary*, must be meant as well against King *James* as any other. But certainly, if the late King still remains *Rightful King*, his Person is irresistible by Officers as well as others, who according to those who are supposed likely to scruple an Oath of Abjuration, are, or ought to be his Subjects. If then his Irresistibility is gone, his Royal Character is lost, according to the generality of the *de facto-men*; and particularly (a) Dean *Sherlock*: Tho' indeed in his late (b) Sermon before the House of Commons he seems to mince the matter.

(a) *Vide* his Case of Resistance.

(b) Sermon 30. Jan. 1693. I shall not dispute the lawfulness of resisting

the Kings Authority; whether it were lawful for the Parliament to take Arms against the King to defend the Laws and Liberties of their Country.

Yet it must needs be said, That a King, till he *ceases to be a King*, is not by the Law of *England* resistible, nor ever was; but by a temporary Clause in King *John's* Charter, left out in all subsequent Confirmations of the English Liberties.

He, therefore, that admits the *late King* to be resistible, therein, virtually pronounces him to have fallen from the Royal Dignity; and may very well swear the Right to be in their Majesties, and abjure those Pretences, against which the Bishop invokes God's Decisive Judgment, when he prays for the *Prosperity* of their Majesties, while engaged in a War against him;

And

And the *General*, if he does not Pray, does as much, and perhaps a great deal more, in Fighting himself, and animating Thousands.

3. No man who has taken the present Oath, is to be presumed likely to refuse an Oath of Abjuration; because, tho' many are not sensible how far they are engaged by the Oath they are under; they, as has appeared above, have already virtually acknowledged the Right of their *present Majesties*, and abjured the late Kings Pretension. But not to swear expressly to what is sworn by manifest Implication, is such a Nicety, as one would think reasonable men should not be guilty of.

4. As 'tis under the Notion of keeping to the Doctrin of the *Church of England*, that men think to justify their evading the plain meaning of the present Oath, and their refusing to take any Oath more express; when the Church Authorities making for an Oath of *Abjuration* come to be weighed with those which are against it; the first must needs apparently turn the Scale, and induce men to take an Oath, clearly expressing what the present Oath implies.

1. In Queen *Elizabeth's* Days, Bishop *Bilson*, agreeably to the known Profession of the whole Church of *England* at that time, supposes it to be no Rebellion for the *Nobles* and *Commons* to joyn together against their Prince, to defend their ancient and accusom'd Liberties, Regiment, and Laws; and that this may be done in all Kingdoms, by virtue of a Power for preserving the Foundation, Freedom and Form of their Commonwealth; which they foreprized when they first consented to have a King.

Bishop *Bilson* of Christian Subjection, Ed. Anno 1586. p. 279, 280.

Vide the Passages cited at large, Fundamental Constit.

2. The Learned Dr. *Falkner* admits, That they who have sworn not to take Arms against the King, yet in some Cases may resist his Person; if he actually engage upon the destroying and ruining a considerable part of his People: For, after citing *Grotius* his Judgment for Resistance in such a case; he says,

Falkner's Christian Loyalty.

Page 542.

Page 545.

'If this be true, it must be upon this ground, That such attempts of ruining do *ipso facto* include a disclaiming the Governing those Persons as Subjects: and, consequently, of being their Prince or King. And then, says he, the Expressions of our Publick Declaration and Acknowledgment would still be secured, that it is not lawful upon any Pretence whatsoever to take Arms against the King.

3. I might cite several Passages in the Bishop of *Worcester's* incomparable *Irenicum*, which make for the Right of the present Government; and by consequence, for swearing to it, exclusive of the supposed Right of the *late King*. But since some, who envy that great *Prelate's* Reputation, would have it thought that he has repented of that Book; I shall refer this Considerer to the *Unreasonableness of the new Separation*; where he lays,

Unreasonableness, &c.
p. 3. ascribed to the Bishop of Worcester.

' I do not deny, that the chief Intention of those who require Oaths of Allegiance to themselves, is to bind men as fast as may be to them: There is a Personal Obligation consequent upon it: But then I say, that the *Rule and Measure* of it is not to be taken from such Intention of the Persons, but from the *General Good*, which was chiefly intended in such things. For there is a common Good of Humane Society, which Mankind have an Obligation to, antecedent to that Obligation they are under to particular Persons. For as Magistrates were designed for a general Good, so the Obligation to them must be understood so, as to be still in subordination to the main end.

' And it is agreed on all hands, that an antecedent and superiour Obligation doth void that which is subsequent and inferior, when they contradict each other. Else an Oath might bind a man to sin: Which no man will assert.

' Therefore whatever the Intention of the Person was, how strict soever the Expressions may be, if the keeping the Oath be really and truly inconsistent with the welfare of a People, in subverting the Fundamental Laws which support it, I do not see how such an Oath continues to oblige.

He says further,

Page 13.

' The Resolution of Conscience in this Case doth not depend upon the Will and Pleasure of the Person to whom the former was made: But upon the Grounds on which it was made, and from which it had its force to oblige: And if those cease, the Obligation of the Oath ceases, together with them. And whether they do or not, no particular Person is so fit to judge as the *Three Estates* of the Realm, as I shall prove from several remarkable Instances to this purpose in our Histories and Parliament Records: Whereby I shall make it appear, That when a Dispute hath happened about the *Rights of Succession*, and to whom the Oaths of Allegiance were to be made; they have looked on it as their proper Right, to limit the Succession, and to determine the Oaths.

In

In pursuance of which he, according to his great Judgment and Reading, makes many just Observations from the ancient History, fully warranting what he asserts: Which indeed an (a) Author, who, if I am not much mistaken, is the famous Advocate for Slavery, Dr. Brady, pretends to Answer, in his way: But in due time he may be shewn his Errors.

(a) *Vide* the Enquiry into the remarkable Instances of History and Parliament Records, used by the Author of the Unreasonableness of a new Separation.

4. Tho Dean Sherlock is afraid of being (b) confounded, if he should enter into the dark Labyrinths of Law and History; He is express, that (c) *what Prince we must obey, and to what particular Prince we must pay our Allegiance, the Law of God does not tell us: but this we must learn from the Laws of the Land.* However, I do not find that he allows the Laws of the Land to give the Prince his Authority; I am sure in his Case of Resistance he says quite the contrary: But if it will appear, That the Kings of England have enjoyed the Crown no otherwise than under a Prior, or immediate Election or Declaration of them, who in Concurrence with their Prince, make and declare the Law, then it must not be denied but *'they receive their Authority under God from Men, and Humane Laws;* in which Case he declares, *'that he cannot imagine that their Power is any other than a Trust,* of which they must give an Account to those who have entrusted them with it, according to those Laws by which they were entrusted to exercise that Power. For whether there be any express Provision made in the Law to call them to an Account, or not, the nature of the thing proves, that if they receive their Power from Men, they are accountable to them: For those who gave a Power, may take an Account of the Use and Abuse of it.

(b) Case of Allegiance p. 2.

(c) Page 54.

But tho' he would not be thought Guilty of the supposed Commonwealth Principle, received by the Great Divine and Lawyer (a) *Braclon*, That the Law makes the King, (to evade the manifest meaning of which words, he takes the beginning and ending of a Paragraph, and leaves out the middle.) Yet he embraces another Principle equally democratical; for he is express, that *'he does not think the Right and Interest of any Prince so considerable, as the Safety and Preservation of a Nation, and the Lives and Fortunes of all his Subjects.*

(a) *Vide* Dr. S's Case of Resistance. Reciting *Braclon's Lex facit Regem.*

Case of Alleg. p. 33.

Beside

Besides which he subjects the Rights of Princes not only to the Judgment of the
 (b) *States* of the Kingdom, but even of the
 (c) ordinary Courts of Justice.

(b) *P. 52. Legal Rights* must be determined by a Legal Authority ; and there is no Authority can take Cognizance of the Titles and Claims of Princes, and the Disposal of the Crown, but the Estates of the Realm.
 (c) *Pag. 54. Speaking of a Legal Right to the Crown* : Is it not most reasonable to think that to be the Sense of the Law, which learned Judges and Lawyers have agreed is the Sense of it, &c.

5. Since the Doctrine of the Church of *England* is thought to condemn the present Settlement, and such Oaths as might bind the Subjects to the Defence of it ; I shall shew some Passages in the *Homilies* of our Church, according to which all true Sons of the Church will be obliged to obey *their present Majesties*, and by consequence, to swear to them, if required by Act of Parliament, as the only *lawful and rightful* Sovereigns.

2 *Hom. of Obedience*,
Ed. 8. p. 112. ' We may not, say the *Homilies*, with-stand, or in any ways hurt an *anointed King*,
 ' which is *God's Lieftenant, Vicegerent, and*
 ' *Highest Minister* in that Country where he is King.

Then speaking of the Example of *David* when pursued by *Saul*, they say,

' By these Examples *David* gives a general Rule and Lesson, not to withstand their *Leige Lord, and King*.

And in another place,
 2 *Hom. against wilful Rebellion, p. 605.* ' Such as rebel against their own *Natural*
 ' *gracious Sovereigns*, however they call them-
 ' selves, or are named of others ; yet they
 ' are indeed no Christians, but worse than Heathens, and such as
 ' shall never enjoy the Kingdom of Heaven, which *Christ* by his
 ' *Obedience* purchased for true Christians, being *obedient* to him the
 ' King of Kings, and to their Prince whom he hath placed over
 ' them.

And whereas the Epithite of *Natural* might induce some to believe, that they meant this only of a King by Right of Birth ; they charge the Subjects of this Realm, who fought for *Lewis* the Dauphin of France against King *John*, with breaking their Oath of Fidelity to their *Natural Lord* the King of *England* : Tho' at the same time *Elleanor*, the Daughter of *John's* Elder Brother, was alive : Of which it cannot be thought that our Church was ignorant.

From all which these Inferences are natural :

1. That the *Anoynted King* upon the place, or for the time-being, he who is the *Liege Lord* and *King* ; is God's *Vicerent*, placed over the Subjects by God's Act, Appointment, or Providence.
2. That the *God* may place two upon the Throne in a joint participation of the Sovereignty ; he cannot otherwise be said to have two *Vicerents* in the same Dominion. And therefore the Prince, who is dispossessed, cannot be God's *Vicerent*, nor have Right so to be, while the *Vicerent* of God's Placing keeps Possession.
3. That the Allegiance of the Subject is due to the *Leige Lord* and *Lady*, or *Vicerents* of God's placing ; and to none else.
4. That as the Obedience to Princes is resembled to the Obedience of *Christ* to *God the Father* ; and of *Christians* to the *Son* ; the Allegiance due to our *Princes*, according to the Doctrine of our Church, is *Active* as well as *Passive* Obedience. And therefore we ought to obey their Commands, in fighting for them against the *Dispossessed Prince*, as well as against any other Person.
5. That, therefore, agreeably to the Doctrine of our Church, the Right of the present *Leige Lord* and *Lady* ought, if required, to be sworn to ; and the Pretence of the *late King* to be *Abjured*.
6. That there can be no Objection against this, from the Supposition, that *his Majesty* is not our *Natural Lord*, as not standing first upon the Royal Line: For then, neither could *King John* have been a *Natural Lord*.

(2.) I might shew several Arguments, in their own nature convincing ; of which I shall name some : As,

1. No Temporal Peer can be suppos'd to scruple an Oath of *Abjuration*, because he either has, or is presumed to have sworn Homage to their Majesties ; which is a devoting of Life and Fortune to their Service, against *King James*, as well as any other Enemy.
2. No *Commoner* is to be thought to decline this ; because it is to be presumed, that he will be obedient to the Common Law ; which, as I have shewn, obliges him to take the Common Law Oath of *Fidelity*, either in the Turne or Leet. And that Oath, according to the Simplicity of ancient Times, and the natural Import of the Words, carries with it both a *Recognition*, and *Abjuration*.
3. No Man can reasonably scruple this, as contrary to the continuing Obligation of a Former Oath of Allegiance : For,

1. How careful soever the Constitution has been to secure the Allegiance of the Subject, by an Oath to the King for the time being; it has made equal Provision for the safety of the Kingdom. Tho' men have not lately been expressly sworn to the Defence of the

Kingdom; the Constitution interprets the meaning and extent of the Word *Allegiance*. When, therefore, that which was sworn to the late King came to interfere with the Publick Safety; either the equal Obligation to both left Men to their Choice, or, rather, the supreme Law of the Publick Safety took place; and that the rather, because Prince and People were jointly bound to the Defence of the Kingdom, and the preservation of the Rights of the Crown of the Kingdom. As appears by the Explanation of the Coronation Oath, received with the Confessor's Laws.

Vide Infra.

2. As the English Subjects are sworn to their Princes, the Princes are reciprocally sworn to their Subjects. These Oaths make a *mutual Contract*; the wilful Breach of which on either side, discharges the other.

(a) Gloss. 1. 271. *Jurabat aliquando & Rex ipse subditis suis fidelitatem, &c.*

Sir (a) Henry Spelman says, 'Sometimes the King himself swore Fidelity to his Subjects, I omit Foreigners; but so Florence of Worcester concerning King Cnut in the Year 1016; they swore Fidelity to him, and he swore to them, that according to God and the World, he would be faithful Lord to them.

(b) Sam. Puf. de Inter-regnis.

'Right, and a Reciprocal Promise.

(c) Citing Cujacius de feudis, & quibus ex causis Vassallus feud' amittit, &c.

Pufendorf lays it as a General Rule, 'That when the Government is confer'd upon a King, there is a mutual Translation of

And it is observable, that Sir (c) Henry Spelman applies what is held of Feudal Relations, to that which is between Prince and People.

And thus I take it to have been received in our Law, as antiently as the time of H. 2. For Glanvil says,

Glanvil, Lib. 9. c. 4.

*Mutua quidem debet esse Domini
& Homagii Fidelitatis connexio ;
quod ita quantum homo debet Do-
mino ex homagio, tantum illi debet
Dominus ex Dominio, præter solam
reverentiam.*

Indeed the Connexion of Fi-
delity between Dominion and
Homage ought to be mutual :
so that as much as a Man owes
his Lord by reason of Homage,
so much the Lord owes him by
reason of Dominion, Reverence
only excepted.

Which being laid generally, cannot be thought restrainable to that Dominion, which an inferiour Lord has over his Tenant.

The Customary of Normandy before cited, speaking of the Allegiance of the Subject due to the Prince, which it expresses by words of Homage, says,

Supra, pag. 18. in M.

He also is bound to Rule, Protect, and Defend them, and to treat them according to the Rights, Customs, and Laws, of the Country.

But the Confessor's Law expressly received in the Fourth of W. 1. if not oftner, is an Authority so full and indubitable to this Point, and yet so little of it has been mentioned by any late Author, that I may be very excusable in transcribing the whole Chapter of the Office of a King, and the Right, and Appendages of the Crown of the Kingdom.

Vide supra.

*Rex autem, quia Vicarius summi
Regis est, ad hoc est Constitutus, ut
Regnum terrenum & populum Do-
mini (& supra omnia sanctam ve-
neretur ecclesiam ejus) & regat, &
ab injuriis defendat, & maleficos
ab ea evellat, & penitus disperdat.
Quod nisi fecerit nec nomen Regis in
eo constabit. Verum, Testante Pa-
pa Joanne, nomen Regis perdit. Cui
Pipinus, & Carolus filius ejus, nec
dum Reges sed Principes sub Rege
Francorum, Guldo scripserunt, qua-
rentes, si ita permanere deberent Fran-
corum Reges solo Regio nomine con-
senti*

But the King, because he is
the Vicegerent of the Supream
King, is constituted to this end,
that he should both rule his
Worldly Kingdom, and the
People of the Lord, and de-
fend them from the Injurious :
and above all, should venerate
his Holy Church, and pluck up
from it, and pull down, and
wholly destroy ; all ill-doers ;
which unless he do, not so much as
the name of King shall remain :
but, as Pope John testifies, he
loses the Name of King. To whom
M Popin,

1. How careful soever the Constitution has been to secure the Allegiance of the Subject, by an Oath to the King for the time being; it has made equal Provision for the safety of the Kingdom. Tho' men have not lately been expressly sworn to the Defence of the

Kingdom; the Constitution interprets the meaning and extent of the Word *Allegiance*. When, therefore, that which was sworn to the late King came to interfere with the Publick Safety; either the equal Obligation to both left Men to their Choice, or, rather, the supreme Law of the Publick Safety took place; and that the rather, because Prince and People were jointly bound to the Defence of the Kingdom, and the preservation of the Rights of the Crown of the Kingdom. As appears by the Explanation of the Coronation Oath, received with the Confessor's Laws.

Vide Infra.

2. As the English Subjects are sworn to their Princes, the Princes are reciprocally sworn to their Subjects. These Oaths make a *mutual Contract*; the wilful Breach of which on either side, discharges the other.

(a) *Gloss. i. 271. Jurabat aliquando & Rex ipse subditis suis fidelitatem, &c.*

Sir (a) *Henry Spelman* says, 'Sometimes the King himself swore *Fidelity* to his Subjects, I omit Foreigners; but 'so *Florence of Worcester* concerning King 'Cnut in the Year 1016; they swore *Fidelity* to him, and he swore 'to them, that according to God and the World, he would be faithful Lord to them.

(b) *Sam. Puf. de Interregnis.*

Pufendorf lays it as a General Rule, 'That 'when the Government is confer'd upon a 'King, there is a *mutual Translation* of 'Right, and a *Reciprocal Promise*.

(c) Citing *Cujacius de Feudis, & quibus ex causis Vassallus Feud' amittit, &c.*

And it is observable, that Sir (c) *Henry Spelman* applies what is held of Feudal Relations, to that which is between Prince and People.

Glanvil, Lib. 9. c. 4.

And thus I take it to have been received in our Law, as antiently as the time of H. 2. For *Glanvil* says,

*Mutua quidem debet esse Dominii
& Homagii Fidelitatis connexio ;
quod ita quantum homo debet Do-
mino ex homagio, tantum illi debet
Dominus ex Dominio, præter solam
reverentiam.*

Indeed the Connexion of Fi-
delity between Dominion and
Homage ought to be mutual :
so that as much as a Man owes
his Lord by reason of Homage,
so much the Lord owes him by
reason of *Dominion*, Reverence
only excepted.

Which being laid generally, cannot be thought restrainable to
that Dominion, which an interior Lord has over his Tenant.

The Customary of Normandy before cited,
speaking of the Allegiance of the Subject
due to the Prince, which it expresses by words
of Homage, says,

Supra, pag. 18. in M.

‘ He also is bound to Rule, Protect, and Defend them, and to
‘ treat them according to the Rights, Customs, and Laws, of the
‘ Country.

But the Confessor’s Law expressly received
in the Fourth of *W. 1.* if not oftner, is an Au-
thority so full and indubitable to this Point,
and yet so little of it has been mentioned by any late Author, that I
may be very excusable in transcribing the whole Chapter of the Of-
fice of a King, and the Right, and Appendages of the Crown of the
Kingdom.

Vide supra.

*Rex autem, quia Vicarius summi
Regis est, ad hoc est Constitutus, ut
Regnum terrenum & populum Do-
mini (& supra omnia sanctam ve-
neretur ecclesiam ejus) & regat, &
ab injuriis defendat, & maleficos
ab ea evellat, & penitus disperdat.
Quod nisi fecerit nec nomen Regis in
eo constabit. Verum, Testante Pa-
pa Joanne, nomen Regis perdit. Cui
Pipinus, & Carolus filius ejus, nec
dum Reges sed Principes sub Rege
Francorum, Sultis scripserunt, qua-
rentes, si ita permanere deberent Fran-
corum Reges solo Regio nomine con-
tenti*

‘ But the King, because he is
‘ the Viceroy of the Supreme
‘ King, is constituted to this end,
‘ that he should both rule his
‘ Worldly Kingdom, and the
‘ People of the Lord, and de-
‘ fend them from the Injurious :
‘ and above all, should venerate
‘ his Holy Church, and pluck up
‘ from it, and pull down, and
‘ wholly destroy, all ill-doers ;
‘ which unless he do, not so much as
‘ the name of King shall remain :
‘ but, as Pope John testifies, he
‘ loses the Name of King. To whom

M

Pepin,

tenti? *A quo responsum est illos decet vocari Reges, qui vigilanter defendunt & regunt ecclesiam Dei, & populum ejus; imitati Regem Psalmographum dicentem, non habitabit in medio domus meae qui facit superbiam, &c. Debet verò de jure rex omnes terras, & honores, omnes dignitates, & jura, & libertates Coronae regni hujus, in integrum, cum omni integritate, & sine diminutione, observare, & defendere, dispersa, & dilapidata, & amissa regni jura, in pristinum statum & debitum, viribus omnibus, revocare. Universa vero terra, & tota, & insulae omnes usque Norvegiam, & usque Daciam, pertinent ad Coronam regni ejus, & sunt de appendiciis & dignitatibus Regis. Et una est Monarchia, & unum est Regnum, & vocabatur quondam regnum Britanniae, modo autem vocatur regnum Anglorum. Tales enim metas & fines, ut praedictae sunt, constituit & imposuit Coronae regni Dominus Eleutherius Papa, sententia sua Anno 67. post passionem Christi, qui primo destinavit Coronam benedictam Britanniae & Christianitatem, Deo inspirante, Lucio Regi Britonum. Debet autem Rex omnia recte facere in regno, & per judicium procerum regni: debet enim jus & justitia regnare in regno potius quam voluntas prava. Lex est semper quod jus facit: voluntas autem, violentia, & vis, non est jus. Debet vero Rex Deum timere super omnia, & diligere, & mandata ejus per totum Regnum suum servare. Debet etiam sanctam Ecclesiam Regni sui cum omni integritate, & li-*

Pepin, and his Son Charles, not yet Kings, but Princes under the King of the Francks, foolishly wrote, enquiring, whether so, or in such case, the Kings of the Francks ought to remain contented only with the Name of King? By whom it was answered, It is fitting that they should be called Kings, who vigilantly defend and rule the Church of God, and his People; imitating the Royal Psalmist, who says, He that acts proudly shall not dwell within my House. But the King ought of Right all Lands, and all Honours, Dignities, and Rights and Liberties of the Crown of this Kingdom, entirely, and without Diminution, to observe, and defend; the dispersed, ruinous, and lost Rights of the Kingdom to the due state, with all his Might, to restore. But the whole Circuit of Land, and all the Isles as far as Norway and Denmark, belong to the Crown of his Kingdom, and are part of the Appendages and Dignities of the King. There is both one Monarchy, and one Kingdom, which anciently was called the Kingdom of the English. For such Bounds and Limits as aforesaid Pope Eleutherius constituted and appointed for the Crown of the Kingdom, by his Decree in the 67th Year after Christ's Passion, who first sent a Consecrated Crown, and by Inspiration from God, Christianity, to Lucius K. of the Britons. But the King
ought

bitate, juxta Constitutiones Patrum, & predecessorum, servare, fervere, manutenere, regere, & contra inimicos defendere. Ita ut Deus præ ceteris honoretur & præ oculis semper habeatur. Debet etiam bonas Leges & Consuetudines approbatas erigere; pravas autem desere, & omnes à regno deponere. Debet judicium reum in regno facere, & justitiam, per Consilium Procerum regni sui, tenere. Ista vero debet omnia Rex in propria persona, inspectis & tactis sacrosanctis evangeliiis, & super sacras & sanctas reliquias, coram regno, & Sacerdotio, & Clero, jurare, antequam ab Archiepiscopis & Episcopis regni coronetur. Tres enim Rex habere servos debet, scilicet luxuriam, avaritiam, & cupiditatem: quos si habuerit servos, bene & illustre regnabit. Regno omnia debet premeditare. Et hoc Regis est. Quia malè cuncta ministrat impetus: juxta Evangelium, omne Regnum in se divisum desolabitur.

ought to do all things in his Kingdom according to Law, and by the Judgment of his Peers. For Right and Justice ought rather to Reign in the Kingdom, than a corrupt Will. Law is always that which makes Right; but Will, Violence and Force is not right. But the King ought in the first place to fear God, and love him, and keep his Commandments throughout the Kingdom. The Holy Church of his Kingdom he ought also with all Entireness and Liberty, according to the Constitutions of his Ancestors and Predecessors, to preserve, cherish, maintain, rule and defend, against Enemies. So that God be honoured above all things, and be always had before his Eyes. He ought also to raise up the good and approved Laws and Customs; but to abolish the bad, and drive them all from his Kingdom. He ought to give

right Judgment in his Kingdom, and maintain Justice by the Council of the Peers of his Kingdom. But all those things the King ought in his proper Person, the Sacred Gospel being look'd into, and touch'd, and upon the Sacred and Holy Reliques, to swear, before the People, the Prelates, and inferiour Clergy, before he be Crown'd by the Archbishops, and Bishops of the Kingdom. For the King ought to have three Servants; to wit, Luxury, Avarice, and Concupiscence; which if he keep Servants, he shall Reign well and illustriously. He ought to premeditate all things for the good of his Kingdom. And this is the part of a King. For Violence administers all things ill: according to the Evangelist, A Kingdom divided within it self, shall be destroyed.

Here I may observe,

1. That this Law Declarative of the Rights of the Kingdom, and Office of the King, settled here with Christianity itself ; exhibits the *Contract* on the Prince's side, which may truly be termed Original ; how many soever ridicule the Notion of it.

2. That this *Contract*, is, in relation to that entred into by the People, perfectly *mutual* : where, according to the learned *Pufendorf*, ' The Heads of one, ' and the same *Contract*, run into each other ' by way of Condition.

For this Law says, If the End for which a King is Constituted be not answered, *the Name of King* shall not remain : And fully explains the meaning of this, where it says, That *Pepin* and *Charles* made a very foolish Question, Whether a King might live contented with the Name only : which is as much as to say, they were so foolish as to enquire, whether they might keep, what they had wholly lost, both as to Name and Thing.

That this was the meaning of the *Confessor's* Law, will farther appear, if we particularly consider what it refers to, as an Authentick President, and Standing Rule for the like Cases : Which was the Judgment of *Pope Zachary* (thro' the Mistake of some Transcriber, called *John*) encouraging the *Francks* to depose their King *Childerick*.

Vide supra, p. 6.

Defens de la Nation Britanique Ed. Anno 1692. p. 219.

According to the Account of this matter in a late French Author ; the Answer of *Pope Zachary*, when he was entreated to give his Advice upon that occasion ; was,

Qu' il croyoit que les Francois estoient quittes envers Childeric du serment de fidelité, puis qu' il ne s' acquiesoit pas envers eux, de ce qu' il avoit solennellement promis : la nature des Contrats Conditionnels étant tell, qu' une partie qui vient a manquer, absout l' autre de la promesse.

That he thought that the French were discharged towards *Childerick* of the Oath of *Fidelity*, since he had not acquitted himself towards them, of that which he had solemnly promised : The nature of *Conditional Promises* being such, that the Party failing, *absolves* the other from his Promise.

Tho' *Du Haillan* does not give the Words of the *Pope's* Answer, yet the Inducement to it which he mentions, gives yet farther Light into this matter.

' *Pepin*, he says, sent the Bishop of *Wit-*
' *burgh* to *Pope Zachary*, to get him to di- *Du Haillan supra 46. b.*
' *spense* and quit the *French* from the Oath
' made to their King. The principal Point which the Bishop was
' to remonstrate, was, That King *Childerick* was wholly unfit to be
' King, and that *Pepin*, *Mayor of the Palace*, upon whom all the Af-
' fairs of the Realm lay, was indeed King, being to support the
' Charges which belong to a King; of which the other had but the
' Name left. That the *French* had till then shewn great Patience in
' supporting the Imbecility and unfitness of Kings: That they had
' had one after another, altho' they were not subjected nor bound to
' obey them, but on the Condition of which we
' have spoken above: That Conditional Pro- *Uide the Oath cited supra.*
' mises ought not to be kept, if they are not
' reciprocally observ'd. But that *Childerick* had not done any thing of
' that which he was bound to by the Condition: Wherefore the
' *French* ought to be freed from their Oath. Besides that, the Bishop
' was to remonstrate to the *Pope*, that doing *Pepin* this Favour, he
' should have Succours against the *Lombards*, who made War against
' him. The *Pope*, therefore, being sollicitated, and moved by the
' Reasons laid before him by the Bishop; and building upon the
' hopes of receiving Succours from *Pepin* against the *Lombards*, En-
' mies of the See of *Rome*, discharged the *French* from the Oath
' made to King *Childerick*.

This having a manifest Relation to the nature of the Oath, which appears to have been expressly Conditional, yields a full Proof, That when the Law of *England* received the *Pope's* Judgment upon *Childerick's* supposed Breach of his Coronation Oath, it, in effect, declar'd the Oath of the Subjects to a King of *England* to be of the same nature with the Oath of the Subjects of *France*. And certain it is, that the Consequence of the King's Breach of the Oath, is declared to be the same here as in *France*.

That thus it was held in the Time of *Hen. 3.* appears by Judge *Bracton*, whom *Fleta* in the time of *Edw. 1.* in great measure transcribes. But having had *Fund. Const. f. 29. 35.* former occasion to appeal to him, and being confirm'd in it by the Judgment of my Learned Friend *Mr. Tyrrel*, who puts the like Interpretation upon *Bracton's* Expressions, I may refer the

Bib. Polito. Dial. p. 705,
711.

the Reader to what I formerly cited out of him ; but, chiefly, to Mr. *Tyrrel's Bibliotheca Politica*. Observing only here,

1. That whereas the *Confessor's Law* speaks of the end for which a King is [Constituted], which is a word of doubtful meaning ; *Bracton*, by way of explanation, has (a) created

(a) *Bracton*, l. 1. c. 9.
ad hoc creatus est Rex &
Electus.

(b) *Lib. 2. c. 24. Est enim corona ejus facere justitiam, & judicium, & tenere pacem, sine quibus non potest eam tenere.*

(c) After speaking of the Superiority of God and the Law. *Et Curiam suam, &c.*

and elected. 2. That whereas the *Confessor's Law* speaks of losing the Name of King, *Bracton* plainly does, of the loss of the Authority, declaring, That the (b) *Crown* consists in doing Justice, and maintaining the Peace of the Kingdom, and cannot be held without it. 3. Whereas that Law speaks of the Kings Duty to do all things in the Kingdom *rite*, or according to the Constitution, and by the Advice of his Peers, *Bracton* is express, that those Peers are, to some purpose, *Superiour*, (c) as being Judges wherein a King exceeds his Regal Authority.

That the Coronation Oath is such a *Condition* or *Contract* on the Prince's side, that the Obligation of the Oath taken by the Subjects depends upon it, will be farther evident from the *Rituals* of the Coronations of our Kings, explain'd by the History of the Times.

Whoever compares the ancient *Rituals* of the Times before the reputed Conquest, with those since, will find them all agree in Substance, and for the most part in Words : but as the confirming the *Confessor's Law* could be no part of the *Rituals* before his time ; neither was it till after *Hen. 1.*

But as it had been in the time of *W. 1.* so in his, the Confirmation of those Laws was the Condition of *choosing* a King to be Crown'd.

The *Ritual* of his Coronation shews plainly, that he was chosen to be King, before his being Crown'd : For,

It provides, That two Bishops should lead the King to be consecrated, from (d) the Convention of the Elders.

(d) *Coronat H. 1. Anno 1100. in Bib. Cot. sub Efig. Claudii A 3. Constitutum Regem de Convetu Seniorum duo Episcopi per manus producant.*

And *Matthew Paris*, whose Authority is generally received : shews, that the maintaining the *Confessor's Law* was settled in a *Convention*, as a Condition of his being to be Consecrated King.

(2) Con-

(b) *Mat. Par.*
f. 55. de H. 1.

(a) *Congregato*
Londoniis Clero Ang-
liae, & Populo uni-

verso, promisit emendationem legum quibus oppressa fuerat Anglia tempore patris sui, & fratris nuper defuncti; ut animos omnium in sui promotionem accenderet & amorem; & ut illum in Regem susciperent & patronum. Ad hæc Clero respondente, & Magnatibus cunctis, quod si animo volente ipsis vellet concedere, & chartâ suâ communire, illas Libertates & Consuetudines antiquas, quæ floruerunt in regno tempore Sancti Regis Edwardi, in ipsum consentirent, & in Regem unanimiter consecrarent; H. autem hoc libenter annuente, & se id facturum cum sacramento affirmante, consecratus est in Regem apud Westminister in die assumptionis beate Mariæ favente Clero, & populo. Cui continuò à Mauricio Lond. Episc. & Thoma Ebor' Arch. Corona capiti imponitur. Cum fuerat Diademate insignitus has libertates subscriptas in Regno ad exaltationem Sanctæ Ecclesiæ & pacem populo tenendam concessit.

London, and Thomas Archbishop of Canterbury. When he was adorned with the Crown, he granted the Liberties under-written, for the Exaltation of Holy Church, and for the preserving Peace to the People.

In the Charter then passed there is this Clause :

Lagam Regis Edwardi vobis reddo, cum illis emendationibus quibus Pater meus eam emendavit, Concilio Baronum suorum.

The Clergy and all the People, being assembled at London, he promised an amendment of the Laws, with which England had been oppress'd in the time of his Father, and Brother lately deceased; that he might fire the minds of all to the Promotion and Love of him: And that they might receive him for King, and Patron. To this the Clergy, and all the Great Men answering, That if with a willing Mind he would yield to them, and with his Charter confirm, those Liberties and ancient Customs which flourished in the Realm in the time of Holy King Edward, they would consent to have him, and would unanimously consecrate him King: Henry willingly assenting, and affirming with an Oath that he would do it, he was consecrated King at Westminister, on the Day of the Assumption of the Blessed Virgin; with the Concurrence of the Clergy and People: upon whose Head the Crown is immediately set by Maurice Bishop of

' I restore to you King Edward's Law, with those Amendments with which my Father amended it, by the Counsel of his Barons.

Accord.

According to which it seems, that the Charter was Signed immediately upon the Coronation, in pursuance of a Promise made at his first being *Elected* to be Crowned.

And according to the most ancient of the *Rituals*, in which the maintaining the *Confessor's Law* is express'd, the Promise always preceded the Coronation, as appears by the following Form :

Vide Lib. Regalem.
This Form seems no earlier than the time of E. 2.
Metropolitanus vel Epus Dominum Regem Coronaturus mediocri distinctaque voce interroget, si Leges & Consuetudines ab antiquis justis & Deo devotis Regibus Plebi Angliæ concessis, cum Sacramenti confirmatione eidem Plebi concedere & servare voluerit ; & præsertim Leges, & Consuetudines, & Libertates, à glorioso Rege Edwardo, Clero populoque concessas. Si autem his omnibus assentire se velle promississet, exponat ei Metropolitanus, vel Episcopus, de quibus jurabit : Ita dicendo, &c.

' Let the *Metropolitan*, or Bishop, who is to Crown our Lord the King, ask him with a mild and distinct Voice, Whether the Laws and Customs granted by ancient, just, and devout Kings, to the *Commonalty* of England, he will yield, and secure to the said *Commonalty*, with the Confirmation of an Oath : And especially the Customs and Liberties granted to the *Clergy*, and *People*, by the *Glorious King Edward*. And if he promise that he will assent to all these, let the *Metropolitan* or Bishop open the matters concerning which he shall swear, saying, &c

Whether the Promise of maintaining the *Confessor's Laws* were, as in the time of H. 1. in a *Convention* before the Coronation, or made part of the *Ritual* ; this was either way a Condition of Receiving a King. And the Three Branches of the Oaths which we have an Account of to this day, have been no more than was contained in that general Promise ; which may appear by the comparing together the Coronation Oaths of *Edward the Son of Edgar*, and of *Ethelred*, before the *Reputed Conquest* ; and of *W. 1.*, *H. 1.*, *H. 3.*, and *W. M.*, since.

Nota. The Commentator upon the Life of King Alfred must mistake, in supposing that this could be Ethelred. But it must have been Edward, the Son of Edgar, who was Crowned about that time. Flor. wig. de An. 975.

Promissio Regis vel Edwardi vel Ethelredi, utrumque enim Dunstanus Kingstoniae coronavit circa Annum 970. Hoc scripto de litera in literam descriptum Com. In vitam Alfredi.

In nomine Sanctae Trinitatis, ego tria promitto Populo Christiano, meisque subditis,

Coronatio Ethelredi Regis Anglo Saxonum An. 989. Bib. Cot. sub Effig. Claud. A. 3.

Hæc tria populo Christiano, & mihi subdito, in Christi promitto nomine.

Promissio juratoria W. I. ex aita per Archiepiscopum Aldredum ante altare Sancti Petri Apostoli apud West. coram clero & populo, secundum Historicos, qui non verba sed effectum memorant.

Coronatio H. I. Regis Anglorum A. 1100. adjuncta Coronationi supra dict. Regis Ethelredi in Bib. Cot.

In Christi nomine promitto hæc tria populo Christiano mihi subdito.

Furamentum Regis in Coronatione inter Statuta varia & Constitutiones regni Angliæ ab H. 3. ad Ed. Bib. Cot. sub Effig. Vesp. B. 7. f. 86.

Furamentum stabilitum per statutum I W. M.

I. Dei
Ecclesi-
am, ac u-
niversum
mei im-
perii po-
pulum
Christia-
num, ve-
a pace
vritu-
um.

I. In pri-
mis ut
Ecclesia
Dei, &
omnis po-
pulus
Christia-
nus, ve-
ram pa-
cem no-
stro arbi-
trio in
omni tem-
pore ser-
vent.

I. Se Vel-
le Dei
Ecclesias
ac Recto-
res earum
defende-
re, nec non
populum
sibi subje-
ctum ju-
ste, & re-
gali Pro-
videntia,
regere.

I. In pri-
mis me
præcep-
turum, &
opem pro
viribus
impensu-
rum, ut
ecclesia
Dei, &
omnis po-
pulus
Christia-
nus, ve-
ram pa-
cem no-
stro arbi-
trio in
Anni tem-
pore ser-
vent.

I. Ser-
vabis
Ecclesiæ
Dei, Cle-
ro populo-
que, pa-
cem, ex
integro,
& con-
cordiam
in Deo,
secundum
vires tu-
as? Resp.
Servabo.

I. So-
lemniter
promis-
tes, & ju-
rabis, re-
gere popu-
lum hujus
regni An-
glia, &
dominio-
rum ei-
dem per-
tinenti-
um, secun-
dum sta-
tuta in
Parlia-
mento
concordo-
ta, & le-
ges, ac
consuetu-
dines, e-
iusdem?
Res. So-
lemniter
promitto
ita face-
re.

2. Me
rapinam,
omnemq;
iniquita-
tem, om-
nibus or-
dinibus
interdi-
cturum.

2. Ali-
um ; ut
rapacita-
tes, &
omnes in-
iquita-
tes, omni-
bus gra-
dibus in-
terdicam.

2. Re-
etiam Le-
gem sta-
tuere, &
tenere.

2. Ali-
um; ut ra-
pacitates,
& omnes
iniquita-
tes, omni-
bus gra-
dibus in-
terdicam.

2. Facies
feri in
omnibus
judiciis
tuis æ-
quam &
rectam
justiti-
am, &
discretio-
nem, in
miseri-
cordia,
& veri-
tate, se-
cundum
vires tu-
as? R. Fa-
ciam.

2. Secundum
vires tuas feri
facies in omnibus
judiciis tuis le-
gem & justitiam
in misericordia?
Res. Faciam.

3. Me
promissu-
rum, &
manda-
turum, in
omnibus
judiciis,
justiti-
am, &
misere-
cordiam.

3. Ter-
tium; ut
in omni-
bus judi-
ciis equi-
tatem &
misere-
cordiam
præcipi-
am: ut
mibi &
vobis in-
dulgeat
suam mi-
sericordi-
am cle-
mens &
misericors
Deus qui
vivit.

3. Rapi-
nas inju-
staque ju-
dicia pe-
nitus in-
terdicere.

3. Terti-
um; ut in
omnibus
judiciis
equita-
tem &
misere-
cordiam
præcipi-
am: ut
mibi &
vobis in-
dulgeat
suam mi-
sericordi-
am cle-
mens &
misere-
cors De-
us.

3. Conce-
dis justas
Leges &
Consuetu-
dines esse
tenendas?
& pro-
mittis es-
se per te
protegen-
das, &
ad hono-
rem Dei
roboran-
das; quas
vulgus
elegerit,
secundum
vires tu-
as? R. Con-
cedo &
promitto.

3. Pro posse tuo
manutenebis le-
ges Dei, veram
Professionem E-
vangelii, & Pro-
testantium refor-
matam Religio-
nem, per Legem
Stabilitam? &
servabis Episco-
pis, & Clero, hu-
jus regni, & ec-
clesiis eorum cu-
ræ commissis, om-
nia jura & pri-
vilegia, quæ per
Legem iis, vel e-
orum aliquibus,
pertinent, vel per-
tinebunt?

R. Hæc om-
nia facere pro-
mitto. Quæ hic
supra promisi te-
nebo & servabo
ita me Deus ad-
juvet.

The Coronation Oath of Edward the Son of Edgar

I. That God's Church and all Christian People of my Kingdom shall enjoy true Peace.

2. That I will prohibit Rapine, and Iniquity, to all Orders of Men.

The Coronation Oath of Ethelred.

I. That God's Church and all Christian People, as much as lies in us, keep true Peace, at all times

2. That I will prohibit all rapacities, & all Iniquities, to all degrees.

The Efect or Substance of the Oath of W. I.

I. That he would defend God's Churches, & their Rectors, & rule all the People subjected to him, justly, and with Regal care.

2. That he would make & observe right Law.

The Coronation Oath of H. I.

I. That I will command and endeavour to my power, that the Church of God, and all Christian People, as much as lies in us, keep true Peace.

2. That I will prohibit Rapacities, and all iniquities, to all degrees.

The Coronation Oath of H. 3. and others.

I. Will you preserve to the Church of God, the Clergy, and People entire Peace & Concord in God, according to your Power? R. I will.

2. Will you cause equal & right Justice, & discretion, in mercy, to be done in all your Judgments, according to your Power? R. I will.

The Coronation Oath established by the Stat. 1 W. M.

I. Will you solemnly promise, & swear, to govern the People of this Kingdom of England, and the Dominions thereto belonging, according to the Statutes in Parliament agreed on, and the Laws and Customs of the same? R. I solemnly promise so to do.

3. That

3. That
I will
promise
& com-
mand
Justice,
& Mer-
cy, in all
Judg-
ments.

3. That
I com-
mand e-
quity &
mercy
in all
Judg-
ments;
that the
clement
& mer-
ciful liv-
ing God,
may in-
dulge his
mercy
to me &
you.

3. That
he would
wholly
prohibit
Rapines,
and un-
just Judg-
ments.

3. That
I com-
mand e-
quity &
mercy,
in all
Judg-
ments.

3. Do
you
grant,
that the
just Laws
& Cu-
stoms
shall be
obser-
ved? &
do you
promise,
that
those
which
the Peo-
ple has
chosen,
or shall
have
chosen,
shall be
protect-
ed and
corrobo-
rated to
your
Power?
R. I grant
and pro-
mise.

3. Will you to
the uttermost
of your Pow-
er, maintain
the Laws of
God, the true
Profession of
the Gospel, &
the Protestant
Reformed Re-
ligion establi-
shed by Law?
And will you
preserve unto
the *Bishops* and
Clergy of this
Realm, and to
the *Churches*
committed to
their Charge,
all such Rights,
and Priviledg-
es, as, by Law,
do, or shall ap-
pertain unto
them, or any
of them? R. All
this I promise
to do.
The things
which I have
here before
promised I
will perform
and keep. So
help me God.

The Uniformity of these Oaths, and the plain Contract which they import, as they stand in the *Rituals*, after the Question to the People, Whether they would have such an one for their King, is very obvious : I shall here only observe the great Wisdom of the Parliament 1 W. M.

1. In freeing their *Present Majesties*, and all future Princes, from the Snare which lay in the general Promise to the *Church* ; and maintaining the *Confessor's Laws*.

2. In putting an end to the Contest upon the doubtful meaning of *quas vulgus elegerit*.

For which, tho' they had full Authority in themselves ; some Formalists would be apt to cavil at such Alterations, were it not for those more ancient *Rituals* above-cited, which have no express Reference to the *Confessor's Law*, nor yield that matter of Dispute which went to an unhappy height in the Reign of C. 1.

But if what I have shewed of the *Confessor's Law*, and the *Rituals* of the Coronations of our Princes, left it yet doubtful, Whether there be such a Contract between *Prince* and *People*, that the *Prince's* Breach of his Coronation Oath discharges the Subjects from the Oath of Allegiance ; the Abstract which I here offer, of what Records, Histories and Law-Books will abundantly evince, may, as I conceive, silence this Controversie ; both as to the *late King's* ceasing to be King, and the Legality of the Possession of *their present Majesties*.

In the time of the *Heptarchy* there was a Law in Anno 789. a General Council of all *England*, expressly affirming, or providing for, the Liberty of the *States* to chuse their King ; which must relate to their respective Kingdoms : But this Law makes no Limitation, so much as to any Family : Yet from before that time, all the *Anglo-Saxon* Kings seem to have been of the Blood of *Woden* : And particularly *Cerdic*, the first of the *West-Saxons* : and *Ina*, who seems the first of that Kingdom, who was Monarch over all ; was chosen, as being of the Blood of *Cerdic*.

In *Ina* we may lay the Foundation of the *Monarchy* ; as he was the first Monarch of all *England*, after being King of that Kingdom, to which, as to the Head, all the rest were since united. From *Ina* to *Brictick* no Lineal Succession was in the least regarded. His Successor *Egbert*, whom some make the first Monarch, because they suppose that then the Lineal Succession began, was chosen upon the account of his Merit, and being of the Blood of *Ina*. To *Egbert* succeeded his Son *Athelstan*, as is gathered from Charters, tho' not mentioned, as I remember, by any Historian which has occur'd to me.

And

And this *Athelstan* was a King of some Parts of *England* in the Life-time of his Father. To *Athelstan* succeeded his Brother *Ethelwolf*, who had been bred a Clergy-man. His Son *Ethelbald*, was in the Father's Life-time King of the *West-Saxons*. Tho, as it seems, he left Male Issue, his Brother *Ethelbert* succeeded him : Then another Brother *Ethelred*, who, for certain, left Issue. Him the youngest Brother *Alfred* succeeded.

All these Successions of Brothers, as *Alfred's* Will proves beyond Contradiction, were by virtue of Settlements, or Elections, in *National Councils*. His Will also shews, that one *Ethelbald*, then alive, was the Son of one of his Brothers; and that there was a Cousen *Osfertb*, who might have been the Son of *Athelstan*, Brother to *Ethelwolf*. To *Alfred* succeeded his Son *Edward*. But the *Ethelbald* last before mentioned, was chosen by part of the Kingdom, and made War against him : Wherein, tho' he lost his Life, his Party had the better. To *Edward* succeeded his Bastard Son *Ethelstan*; then the mulier *Edmund* : his Sons *Edwi*, and *Edgar*, were set aside for their Uncle *Edred*. *Edwi* succeeding, was rejected by the *Mercians* and *Northumbrians*, who chose his Brother *Edgar*, who afterwards was chosen to the whole. Upon his Death there was a Competition between *Edward*, who seems to have been *Edgar's* Bastard Son; and *Ethelred*, undoubtedly legitimate. *Edward's* Party prevail'd for his being King : But his Murder soon made way for *Ethelred*. The *Ritual*, or *Pentical*, us'd at his Coronation, which appears to have been a Standing Form, is preserv'd to us in the *Cotton Library*; wherein, among other things, there is a Prayer to God to bless this Prince purely *Elected*. He being guilty of Misgovernment, was rejected; and *Swein the Dane* received. Upon the Death of *Swein*, *Ethelred* was soon restored, upon promise to govern better than he had done. Soon after, *Cnut* the Son of *Swein* Lands, with a Claim, as it should seem, of the *Divine Right* of Succession, as the Son of *Goldesburgh*, Daughter of King *Ethelbald*, who either was the Son of an Elder Brother of King *Alfred*; or else, if it were another *Ethelbald*, the Claim from him as a King in *England*, shews, That a Qualification from the *Saxon Blood Royal* was accounted sufficient for any one, of Merit, and Power, to make good his Claim.

Notwithstanding which Claim, part of the Kingdom kept to *Ethelred*; and upon his Death they chose *Edmund*, who, as appears from undoubted Authorities, was a *Bastard*.

Cnut possessed himself of the whole; and was succeeded by his Son *Harold*, who was *Spurious*, which is worse than a *Bastard*.

Hardicnute, the Legitimate Son, succeeded. Upon his Death *Earl Godwin* was chosen *Administrator* of the Affairs of the Kingdom, during a *Vacancy*: And, thro' his Influence, *Edward the Confessor*, Son of *Ethelred* by his Queen, was chosen; whose Parliament says, The *Hereditary Succession* was endanger'd by the Interposition of the *Danes*. In that Body of our Laws, which most of our Kings to this very Day have expressly sworn to maintain, they are declared to be *Constituted* to do Justice, and to *cease to be Kings*, if they Answer not the ends for which they are constituted. The *Confessor*, being jealous of the Power of *Earl Godwin*, and his 7 Sons, all of them Earls; to secure himself against them, by the Power of the Earls *Leofric*, and *Siward*, obtains a Settlement in *Parliament* upon his Cousin *William*, Duke of *Normandy*, Grand Nephew to the *Confessor's* Mother *Emma*: Besides that, *William's* Wife *Matilda*, Daughter of *Baldwin* Earl of *Flanders*, came from a Daughter of King *Alfred*. *W. I.* dying in *Normandy*, was upon his Death-bed pres'd by some about him to appoint his Successor; which he declared, That he had no Authority to do, but left it to God's Providence: plainly intimating, That as he could not appoint his Successor, neither had any body a Right to succeed, till chosen or submitted to, by the States, or People. He wish'd indeed, that his Second Son *William* might succeed; which prevail'd as a Recommendation: And tho' the *Normans* would have had *England* to go as an Accession to *Normandy*, where *Robert* the eldest Son of *William I.* was received, the *English* made the Younger Son King: And after his Death, chose a third Son *Henry*, tho' *Robert* was still alive.

The *Ritual* of the Coronation of *H. I.* to be seen in the *Cotton Library*, bound up together with that of *Ethelred's*, agreeing with it in substance, instead of purely *Elected*, has pre-elected; plainly relating to the Choice before the *Investiture*: Which, indeed, is suppos'd in both the *Rituals*, in that part which is intitled, *The Designation of the Royal State*; where the Kings are exhorted to retain the State, which they had to that time: He procured a Settlement of the Crown upon his Son *William*; and after the Death of him, and of another Son, upon his Daughter *Maud*.

One Author indeed says, It was only, in case he died without Heir: Others say, without Heir Male. Certain it is, that *Stephen*, *Sisters* Son to *H. I.* being with him in *Normandy* at his Death, made use of his Recommendation; which, together with his own Merit, and the Consideration of his being of the *Blood Royal*, induced the *States* to choose him. Nor had he any disturbance from *Maud's* Pretence of Title, till he began to play the Tyrant. And tho' the

was near being Crown'd, she refusing the main Preliminary, the Promise of maintaining the *Confessor's Laws*, was rejected before she had been fully received, and ran away in a Fright. Which made way for *Stephen's* remounting the Throne.

Then her Son *Henry* became an Adventurer for the Crown. But the Chief Forces on both sides being *English*; and *Stephen's* brave Son *Eustace* his design'd Successor, dying, both submitted to the Umpirage of a *Parliament*, which decreed, That *Stephen* should Reign as long as he liv'd, and *Henry* after him, as *Lawful Heir*; That is, as the Charter then pass'd explains it, as Adopted Heir to *Stephen*.

Upon the Death of *Stephen*, H. 2. was made K. who, to secure the Succession to his Eldest Son, got him to be Crown'd King in his own life-time; which brought great Troubles upon the indulgent Father: Tho' in the Oath of Allegiance sworn to the Son, there was an express *Salvo*, not to prejudice what was due to the Father, as long as he liv'd, and would exercise his Right. This Son died in the Life-time of his Father; who was succeeded by another Son *Richard*, who was call'd no more than Duke of *Normandy* till Crown'd. After him, the *States* chose King *John*, as the *Archbishop* then expressly declared. And this they did, tho' *John* had been attainted in the Life-time of R. 1; and another Brother elder than *John* had left a Son, *Arthur*, besides a Daughter. But their Father dying in the life-time of *Richard*, *John* had the Right of Proximity, *Arthur* only of Representation.

John having broken the Original Contract with a witness, the *Barons* invited over *Lewis*, the Dauphin of *France*, to be their King; whose Right to be chosen, the French King's Advocate asserted, in that the Throne was become *Vacant*; that upon that the Administration fell upon the *Barons*; who chose *Lewis*, upon the account of his Wife, whose Mother was the only Survivor of all the King of *England's* Brothers, and Sisters. Upon *Lewis* his Landing, great part of the Nation joyn'd his Arms against *John*: And in all probability *Lewis* had obtained quiet Possession of the Throne, had he not discover'd an Intention to treat the *English* as Traytors against their Prince, in receiving him. This his Folly, and Ingratitude, made the *Barons* desert him. And *John* dying in the Quarrel, they chose *Henry* the Son of *John*; tho' the Father's Violations of his Oath, and their Rights, were fresh in their Memories. At that time *Eleanor* the Sister of Prince *Arthur* was alive, and lived till the 20th of the Reign of Hen. 3. in the 17th of whose Reign the *Barons* of the Kingdom, or they who believed they were able to influence the Body of them, threatned, by a *Common Council* of the whole Realm, to expel him and his Evil Counsellors; and to consult together for the creating a new King.

Henry

Henry dying while his Son *Edward* was absent in the Holy War, the *States* convened and chose *Edward*; upon whom, as they declared, the Government was devolved by *Hereditary Succession*, and the *Will* and *Fidelity*, or Submission, of the Peers of the Kingdom.

E. 1. in the 25th of his Reign publicly begg'd Pardon of his People for his Misgovernment; and being upon crossing the Seas, entreated them to receive him again, if he should return; if not, that they would make his Son King after him.

He was succeeded by *E. 2.* who for his Misgovernment was set aside, and his Son *E. 3.* chosen in his stead. Upon whose Death *R. 2.* came in, by vertue of a Settlement upon him in Parliament, tho' the Right of *Proximity* was in *John of Gaunt*, the eldest surviving Son of *E. 3.* *R. 2.* governing very arbitrarily, was, about the middle of his Reign, fairly admonished by his Parliament, who told him, That they had an ancient Statute, according to which they might abrogate him, and set up some body near of kin, of the Royal Stock: But he taking no warning by that, and the Example of *E. 2.* was deposed, and *H. 4.* Son of *John of Gaunt*, received: In whose time the Crown was entailed by Authority of Parliament. *H. 5.* came in under the Entail; yet it was thought a mighty Sign of the Confidence the Nation had in him, that the Lords swore Fidelity to him before he had taken his Coronation Oath.

His Son *H. 6.* being a weak Prince, was prevailed upon to advance *Richard* Duke of *York*, till he was raised to a Competition for the Crown, which he pretended to as Son to *Ann*, Daughter to *Roger Mortimer*, Son to *Philippa*, Daughter of *Lionel* Duke of *Clarence*, third Son of *E. 3.* and yet weighty Objections lay against that Claim: For,

1. The Right of *Proximity* was in *H. 6.* as descended from the Eldest surviving Son of *E. 3.*

2. There are ancient Authorities which tell us, That the Crown had been entailed in the time of *E. 3.* upon Heirs Male.

3. The like Authorities say, That *Philippa*, under whom *Richard* Duke of *York* claimed, was a Bastard.

However, notwithstanding *Richard's* Claim of Right, *Hen. 6.* was, by the *States*, adjudg'd to hold the Kingdom during Life. And *Richard* dying, his Son put in for the Crown, upon Suggestion, that *Henry 6.* had broken the Contract established in Parliament, and was unfit to Reign. But tho' *Hen. 6.* ran away from *London*, the chief Seat of Power, *Edw. 4.* was by his own Parliament accounted not to be King, till some time after, when the *States* had received and crown'd him: He leaving his eldest Son an Infant, *Richard* the Uncle assum'd

the Government, as Protector of the King and Kingdom ; with what sort of Consent does not fully appear : But a *Convention* assembling soon after, declare, among other things, That the Children of *Edw. 4.* were Bastards ; because, as they alledged, the Father had been contracted to another before he married their Mother ; and pronounce, that *Richard* had the only Right to be chosen.

The Power and Cunning of *Henry* Duke of *Richmond*, who had many Blots in his Escutcheon, caused him to be received so generally, that *Richard* made Head against him with a very unequal Number : and dying in the Field of Battle, his Body and Memory were left to be trampled on.

Henry 7. having first obtained a Settlement of the Crown, by Authority of Parliament, upon himself and the Heirs of his Body, marries the Daughter and supposed only surviving Child of *Edw. 4.* from which Marriage came *Hen. 8.* who made several Settlements in Parliament : In two of which he declared, That if the Limitations then made, should fail, the Kingdom would be destitute of a Legal Governour. He dying, his Son *Edw. 6.* came in, according to his last Settlement, as did E's Half Sister *Mary*, tho' she lay under an Illegitimation ; as did her Half Sister, and Successor, Queen *Elizabeth* of Immortal Memory. She dying without Issue, *James*, descended from a Daughter of *Hen. 7.* married to the King of *Scots*, was received as next Heir ; tho' being a Foreigner, he could not claim a Right of Descent ; nor was within any Settlement then in force : And tho' the Parliament 13 *Elizab.* had made it Penal to assert, That any but the Issue of her Body had Right to succeed her. During whose Life, it was made Treason to deny the Parliaments Power to dispose of the Crown, and Forfeiture of Goods and Chattels afterwards.

Not to mention the frequent Sollicitations of Lords and Commons for her to name a Successor for their Confirmation ; because the Law had not determined who ought to succeed.

Tho' the Parliament 1 *Jac. 1.* seem first to have set up the Divine Right of Birth ; by good Fortune they accounted it so Sacred, or would have the King believe so ; that they made no Settlement, only offer'd their Recognition to him, as the first Fruit of their Loyalty and Faith to him, and his *Royal Progeny*, and *Posterity*, for ever : which if it were a Settlement, would leave the *States* at liberty to chuse any one of his Progeny and Posterity. This is the last Colour of any Settlement of the Crown, before that which was made upon their Present Majesties, directly agreeing with the Recognition, 1 *J. 1.*

If what I have represented above be true, it must be granted, that no reasonable Objection against the Authority to require an Oath of *Abjuration*, and the Duty of the Subject to take one if required, can remain with Honest Minds.

Since therefore it is not to be presumed that any considerable number of Men would hold off, without being able to assign a Reason; till what I have shewn receive a clear Answer, it will be natural to conclude; Either that the Number of *Non-swearers* in such a case would be few, or that their apparent Obstinacy would make their Interest inconsiderable.

Since it has appeared, that the Author of the Case has very little observed what has passed in our own Kingdom, it is no wonder that he should take no notice of what has lately been done in the Kingdom of *Scotland*, without any such dismal effect as he would pretend to foretel, if an Oath of *Abjuration* should be required here, by Act of Parliament.

But whereas he affirms, that an Oath of *Allegiance to the Possessors of the Throne*, is that which has secured our Government for many Hundreds of Years, and does secure all other Governments in the World besides: This Form of an Assurance to the present Government is required by an Act of Parliament in *Scotland*, to be taken by all People in any Trust or Power throughout the Kingdom.

Page 30.

‘ I A. B. do in the Sincerity of my Heart
 ‘ assert, acknowledge, and declare, That *their*
 ‘ Majesties King William and Queen Mary, are
 ‘ the only lawful undoubted Sovereigns of this
 ‘ Realm, as well *de jure*, that is, of Right, King and Queen; as *de*
 ‘ *facto*, that is, in the Possession and Exercise of the Government.
 ‘ And therefore I do sincerely and faithfully promise and engage,
 ‘ That I with Heart, and Hand, Life and Goods, maintain and de-
 ‘ fend their Majesties Title, and Government, against the late King
 ‘ James, and his Adherents; and all other Enemies, who either by
 ‘ open or secret Attempts shall disturb and disquiet *their Majesties*, in
 ‘ the Possession and Exercise thereof.

Act of Parliament published in Scotland, May 23. 1695.

Which Assurance being required to be given at the time of taking the Oath of *Allegiance*, or *Fidelity*, is so manifest an Explanation in what sense the Oath is taken; that any man who has given this Assurance, and yet should declare a belief that the late King is the only Lawful Sovereign, might well be thought not to scruple to swear to any Form of Words.

But

But I challenge our *Considerer* to shew, that this Assurance, of the nature of an *Abjuration*, has had any worse effect in *Scotland*, than the turning King *James's* Friends out of Offices under *their present Majesties*; and occasioning the Preferments of Men, who are engaged in Interest, and Principle, to defend that Government, the Right of which they have maintained from the beginning.

After all, I pretend not in any thing that I have written to give Measures to an *English* Parliament; from which I cannot but expect, in due time, all things for the good of *England*.

I have only represented the Arguments without doors, nor can it be a Fault for a private Person to answer one who appears under no higher Character. Which of us has labour'd most in the *Service* of

the *Present Government*, it is not for either to judge; but each best knows his own *Sincerity*: and happy is he who condemneth not himself in that which he approveth.

Vide Case, p. 1. There are not two Men in *England*, that in their Hearts do more sincerely love their present Majesties, nor that according to their poor Capacities and Stations serve them better than you and I.

APPEN-

APPENDIX.

TH^O, perhaps, I may be thought already to have dwelt too long upon Presidents of Oaths to our Kings, besides the Common Law Oath of *Fidelity*: Yet I cannot but think, that those Readers who are not conversant in the Rolls of Parliament, may be gratified by a Transcript of the Entries, concerning Oaths taken at two different Parliaments in the Reign of *H. 6.* when the *Considerer* supposes, that there was no occasion for more than the usual Oath of Allegiance.

Page 24. supra. I will not trouble you with the Instance of H. 6. &c.

The 24th day of *July*, the 33d Year of our Sovereign Lord the King *H. 6.* at *Westminster*, in the great Council-Chamber time of Parliament, in the Presence of our said Sovereign Lord; the Lords Spiritual and Temporal, in shewing their Trough, Feith, and Love that they have, and bore to his Highness, every Lord Spiritual, laying his hand upon his Breast, and every Temporal Lord, taking our said Sovereign Lord by the hand, freely sware, and promitted, in Manner and Form that followeth:

I promit unto your Highness, by the Feith and Trough I owe to God, and to you, that I shall truly and faithfully keep the Leigeance that I owe unto you my most Sovereign Lord. And to put in my Devoir to do all that may be to the Welfare, Honour, and Safeguard of your most noble Person, and Royal Estate, Pre-eminence, and Prerogative. And I shall at no time will or consent to that, that might in any wise be, or sownd, to the Hurt or Prejudice of your said most Noble Person, Dignitie, Corone, or Estate. And over that, I shall with all my Power resist, and withstand, all them that wold in any wise presume to attempt the contrary: So God me help, and his Seyntes.

After

Act. Parl. 38. H. 6.
 7. After this *Richard Duke of York* had been declared Successor, after a Claim of Right to the Possession; but having rebelled against *H. 6.* was attainted by Act of Parliament, in the Rolls of which there is this Entry.

N. 26. *Memorandum*, That the XIth Day of *December*, the Year of the most noble Reign of *H. 6.* our Sovereign Lord 38. a Cedula of a Form of an Oth was redde in the Kings High Presence, and the Lords Spiritual and Temporal being in the Parliament Chamber at *Coventre*. And after the reading of the same Cedula, the Bishop of *Winchester*, Chancellor of *England*, by the King's High Commandment, made Question to every Lord in his Presence, by himself, that he would make such Oth as was redde in the same Cedula; and thereupon all the Lords, whose Names been here underwritten with their own Hands, and their Seals put to these Presents; first the Lord *Stourton*, and so every Lord in his Presence, and by himself, agreed to make such Oth as was redde: and then and there in the same Chamber, in the Kings High Presence, all the Lords Spiritual and Temporal, and every of them, by himself, in his Person, made the said Oath upon the Holy Evangelies, setting thereto his Seal and Sign Manual, as here under appeareth, according to the Tenure of the foresaid Oath and Cedula: The Tenure of which Oath and Cedula followeth in these Words:

"I *A.B.* knoulech you moost high and mighty, and moost Christi-
 "an Prince King *H. 6.* to be my moost redoubted Sovereine Lord, and
 "rightwesh by Succession born to reign uppon me, and all your Leige People.
 "Whereupon I voluntarily, without Cohertion, promitte and oblysh
 "me, by the Feith, Trough, and Liegeance that I owe unto you my moost
 "redoubted Sovereine Lord, that I shall be without any variance
 "true, faithfull, humble and obeisaunt Subject and Leigeman unto
 "you my moost redoubted Sovereine Lord: and that I shall be unto my
 "lives end, and at all times and places, redy and attending at your
 "Calling, in my most herty wise and manere, as any true Liegeman ow-
 "eth to be unto his Sovereine Lord: Putting me in my true unde-
 "raid Devour, to doo all that may be unto the wele and suerte of your
 "most Royal Person, of your most Royal Estate, and the veray Con-
 "servacion and Continuance of your moost high Authority, Pre-emi-
 "nence, and Prerogative; to the wele, suerte, and preserving, of the Person
 "of the moost high and benigne Princess *Margaret the Queen*, my Sove-
 "raign Lady; and of her moost high and noble Estate, she being your
Wife.

Wife. And also to the wele, suerte, and honour, of the *Person* of the
 'right High and Mighty Prince, *Edward*, my right redoubted Lord the
 'Prince, your first begotten Son : and of the most high and noble *Estare*
 'of the same : and feithfully, truly, and obeyfantly, in my most hum-
 'ble wife and mannere, honour, serve, obey, and bore myne *Allege-*
 'aunce unto you my moost redoubted Sovereaine Lord, *during* your
 'Life : which God fader of Mercy, for my most singular recomfort,
 'preserve long in Prosperity to endure. And if God of his infinite
 'Power shall take you from this Transitory Life, me bering Life here
 'in this World, that then I shall take and accept my sayd redoubted
 'Lord the Prince *Edward*, your said first begotten Son, for my Sove-
 'raign Lord, and bare my Trough, Feith, and Liegeance unto him, as
 'my Natural born Sovereaine Lord, and after him unto his *Succession* of his
 'Body lawfully begotten. And in Defaute of his *Succession*, which
 'God defend, unto any other *Succession* of your Body lawfully coming.
 'And that I shall never at any time, for any manere occasion, colour, *affinitie*,
 'or causes, *Consent*, give Aid, Assistance, or Favour, or agree, to any
 'thing that I may understand or know by any mean, that may be
 'prejudicial, or contrary, to the Premises, or any of them. But that
 'I shall, as sone as I may soo have the knowlech, put me in my due
 'undelaied Devoir, in my moost herry and effectious wise and ma-
 'nere, without colour, and sayntis, with my body, Goods, Might, Pow-
 'er, Counsaill, and Advertisement, to resist, withstand, and *subdue*, all
 'them that wolde in any wise presume to doo contrary to the Pre-
 'mises, or any of them : So God me help, and these Holy Evange-
 'lists. In witness whereof I set to these Presents my Seal and my
 'Sign Manual.

Archbishop of Cant.

Archbishop of York.

Bishops 16.

Abbots 13.

Priors 2.

Barons 22.

Upon these memorable Entries I may observe,

1. If all the Bishops, Abbots, and Priors, and all the Lay No-
 bility, who took the Oaths above, especially the last ; at the same
 time believed the Right of Succession, or other Right to the Crown,
 to be in any other Person than *H. 6.* they were manifestly guilty of
 down-right Perjury.

2. As it is to be presumed that they would not all forswear themselves; it is to be concluded, that they believed *H. 6.* to have been *rightfully by Succession born to Reign*; or, as is said of his Son, *natural born Sovereign*; and by consequence, that his Right was founded upon the Act of Settlement 7 & 8 *H. 4*; or, at least, some way different from what our *de facto*-men go upon.

3. It is to be believed, either that the same Oaths were taken in the House of Commons, tho' no Journals thereof are now to be found: Or else, that the Power and Influence of the Lords *Spiritual and Temporal*, was then held so great, that no Attempt of the *Commons* to the contrary of what the *Lords* had sworn to maintain, was in the least to be feared.

It must be confess'd, that these Oaths did not long secure that unfortunate Prince *H. 6.* But then;

1. He was one of neither Spirit, nor Ability, to use the advantage which he had.

2. It cannot reasonably be imagined, that if the last Oath had been taken throughout the Kingdom, *E. 4.* could have raised any Party to make Head against *H. 6.*

3. However, *E. 4.* claimed a Right to be received for King, upon pretence that *H. 6.* had broken the *Contract established in Parliament*, and was *unfit to Reign*. Nor is it for me to hold, that any Oath can or ought to be a Security when such a case happens.

F I N I S.

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2. His Speech to the Grand Jury at Chester, April 11. 1692.
3. His Charge to the Grand Jury at the Quarter Sessions held for the County of Chester on the 11th of October, 1692.
4. His Charge to the Grand Jury at the Quarter Sessions held for the County of Chester, on the 10th of April, 1693.

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